

Gen 58-B(5)(1)(F)

Brown & Williamson v. Wigand
Volume 3

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7/16/96

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JEFFERSON CIRCUIT COURT

DIVISION NINE

BROWN & WILLIAMSON :
TOBACCO CORPORATION, :
Plaintiff, :
vs. : Case No. 95-CI-06560
JEFFREY S. WIGAND :
Defendant. :

Continuation of the videotaped
deposition of Jeffrey S. Wigand, the
Defendant herein, was taken before Special
Commissioner Richard A. Revell, and reported
by Thomas F. Runfola, a Registered
Professional Reporter, pursuant to notice,
at the offices of Middleton & Reutlinger,
2500 Brown & Williamson Tower, Louisville,
Kentucky, on Tuesday, July 16, 1996, at 9:00
o'clock a.m.

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Curtin, Schneider & Lawrey

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<p>1 APPEARANCES:</p> <p>2 Middleton & Reulinger 401 South Fourth Avenue 3 2500 Brown & Williamson Tower Louisville, Kentucky 40202 4 By Mr. James E. Williams.</p> <p>5 and</p> <p>6 King & Spalding 191 Peachtree Street 7 Atlanta, Georgia 30363 By Mr. Gordon A. Smith and 8 Mr. William C. Mandriess, III.</p> <p>9 and</p> <p>10 Chamberlaine & Parks 30 Rockefeller Plaza 11 New York, New York 10013 By Mr. David L. Wallace, and 12 Mr. Bruce G. Sheffler</p> <p>13 and</p> <p>14 Parker & O'Connell Suite 1340 15 Provident Center 400 West Market Street 16 Louisville, Kentucky 40202 By Mr. Michael J. O'Connell.</p> <p>17 ON BEHALF of the Plaintiff.</p> <p>18 Mouley, Johnson & Ervin Suite 400 19 715 West Main Street Louisville, Kentucky 40202 20 By Mr. Joseph V. Mouley.</p> <p>21 and</p> <p>22</p> <p>23</p> <p>24</p>	<p>1 IMORE</p> <p>2 EXAMINATION</p> <p>3 Page</p> <p>4 By Mr. Sheffler 317</p> <p>5</p> <p>6 EXHIBITS</p> <p>7 Marked</p> <p>8 Exhibit No. 22 336</p> <p>9 Exhibit No. 23 343</p> <p>10 Exhibit No. 24 370</p> <p>11 Exhibit No. 25 393</p> <p>12 Exhibit No. 26 409</p> <p>13 Exhibit No. 27 413</p> <p>14 Exhibit No. 28 424</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>
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<p>1 Shea & Gardner 1800 Massachusetts Avenue, N.W. 2 Washington, DC 20036 By Mr. John D. Aldrich and 3 Mr. Louis S. Wertheimer</p> <p>4 On behalf of the Defendant.</p> <p>5 ALSO PRESENT:</p> <p>6 U.S. Department of Justice 7 Criminal Division, Fraud Section 1400 New York Avenue, N.W. 8 Washington, DC 20535 By Mr. Jimmy S. Warren</p> <p>9 and</p> <p>10 Brown & Williamson 11 Tobacco Corporation 2600 Weaver Road 12 P.O. Box 1036 13 Macon, Georgia 31299 By Scott Applatan, Ph.D.</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>	<p>1 JEFFREY S. WIGAND.</p> <p>2 being previously sworn, as hereinafter</p> <p>3 certified, deposes and says as follows:</p> <p>4 -----</p> <p>5 THE VIDEOGRAPHER: Going on the</p> <p>6 record. The time is approximately 9:11</p> <p>7 a.m.</p> <p>8 THE COURT: Dr. Wigand, you are</p> <p>9 still under oath from yesterday, answer</p> <p>10 Mr. Sheffler, please.</p> <p>11 EXAMINATION</p> <p>12 BY MR. SHEFFLER:</p> <p>13 Q. Good morning, Dr. Wigand.</p> <p>14 A. Good morning.</p> <p>15 Q. You told us yesterday that --</p> <p>16 that there was work done at Brown &</p> <p>17 Williamson on a safer cigarette project.</p> <p>18 Do you recall that?</p> <p>19 A. Yes.</p> <p>20 Q. And you said that Brown &</p> <p>21 Williamson management canceled this safer</p> <p>22 cigarette project because of fears that it</p> <p>23 would implicate other cigarettes in</p> <p>24 lawsuits as being unsafe. Do you recall</p>

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<p>1 that?</p> <p>2 A. I believe so.</p> <p>3 Q. Now, you testified that Airbus</p> <p>4 was a safer cigarette project yesterday;</p> <p>5 is that correct?</p> <p>6 A. I believe so.</p> <p>7 Q. Was Airbus the project that was</p> <p>8 canceled as a result of litigation</p> <p>9 concerns, in your view?</p> <p>10 A. Airbus was part of an overall, I</p> <p>11 would say, program to develop a safer</p> <p>12 cigarette. Airbus was one of the key</p> <p>13 elements of a safer cigarette.</p> <p>14 Q. Well --</p> <p>15 A. There were other elements to it</p> <p>16 such as reducing additives, looking at</p> <p>17 reducing tar and nicotine, measuring the</p> <p>18 tar-to-nicotine ratio, from 12, 15 and one</p> <p>19 down to one-to-one. Project Green Dot was</p> <p>20 a safer cigarette project. Project Day</p> <p>21 was a safer cigarette project.</p> <p>22 Q. My question was unclear, I</p> <p>23 guess, sir, because what I was asking you</p> <p>24 is was Airbus the project that was</p>	<p>1 Q. Can you answer my question,</p> <p>2 sir? Were you on the agenda to discuss</p> <p>3 Airbus?</p> <p>4 A. Yes.</p> <p>5 Q. What other cigarette project</p> <p>6 were you on the agenda to discuss at the</p> <p>7 research --</p> <p>8 THE COURT: Do you still have</p> <p>9 the agenda from yesterday? I think what</p> <p>10 he is asking you is what was your assigned</p> <p>11 role, not participating in others. Is</p> <p>12 that correct?</p> <p>13 MR. SHEFFLER: Thank you,</p> <p>14 Judge, that's exactly what I was asking.</p> <p>15 THE WITNESS: My assigned role</p> <p>16 was to participate in the meeting.</p> <p>17 BY MR. SHEFFLER:</p> <p>18 Q. What were you assigned to</p> <p>19 address at this meeting in the agenda that</p> <p>20 we have marked as Exhibit 21?</p> <p>21 A. All of the topics including and</p> <p>22 specifically Airbus.</p> <p>23 Q. Let's start at the beginning.</p> <p>24 The defensive and offensive strategies.</p>
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<p>1 canceled because of litigation concerns</p> <p>2 that you were talking about yesterday?</p> <p>3 A. Airbus was a project that was</p> <p>4 canceled as a result of, as well as other</p> <p>5 programs that would be directed at a safer</p> <p>6 cigarette. The key program was Airbus.</p> <p>7 Q. The key program was Airbus?</p> <p>8 A. A key program was Airbus.</p> <p>9 Q. Okay. That was the only program</p> <p>10 that you discussed of B & W's at the</p> <p>11 Vancouver meeting; is that correct?</p> <p>12 A. That is not correct.</p> <p>13 Q. That was the only program that</p> <p>14 you were on the agenda to discuss at the</p> <p>15 Vancouver meeting; is that correct?</p> <p>16 A. To assume that I sat through the</p> <p>17 Vancouver meeting and only participated</p> <p>18 for one agenda item, I think, is</p> <p>19 unrealistic.</p> <p>20 Q. Sir --</p> <p>21 A. It was a scientific meeting. I</p> <p>22 discussed one particular aspect, Airbus.</p> <p>23 I also participated in all the other</p> <p>24 conversations such as biological testing.</p>	<p>1 who was assigned to discuss that at the</p> <p>2 meeting?</p> <p>3 A. I'm sorry, what was it?</p> <p>4 Q. Defensive and offensive</p> <p>5 strategies, who was assigned to discuss</p> <p>6 that in the meeting?</p> <p>7 A. Who was assigned?</p> <p>8 Q. Yes, who does it say after that?</p> <p>9 Who does it say on the agenda was going to</p> <p>10 address that, make the presentation on</p> <p>11 that?</p> <p>12 A. I guess we were all going to sit</p> <p>13 there and listen and not say anything.</p> <p>14 Q. Who was supposed to make the</p> <p>15 presentation on --</p> <p>16 A. Alan Heard.</p> <p>17 Q. Thank you, sir. Who was</p> <p>18 supposed to make the presentation on a</p> <p>19 position paper underpinning scientific</p> <p>20 strategies for the group?</p> <p>21 A. For the group meaning what?</p> <p>22 Brown & Williamson?</p> <p>23 MR. ALDOCK: Your Honor, I</p> <p>24 object. He loads the question. The</p>

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<p>1 agenda speaks for itself. We can all read 2 it. It's in the record. He can read it 3 to him, but each time he says it, he says 4 who was -- not who was on the agenda. 5 Who is on the agenda is a 6 perfectly fair question. He answered he 7 was the primary discussor who was assigned 8 the primary responsibility. He says 9 that's not true. He says the agenda says 10 what it's says and that was the guy 11 presenting. But he doesn't buy onto the 12 rest of the loading. 13 So he tries a different one each 14 time. He disagrees. He fights with him. 15 I mean, we can do this, but I'm not sure 16 where we are going. 17 MR. SHEFFLER: If I may respond, 18 your Honor, the question was very simple, 19 who was supposed to make the 20 presentation -- 21 THE COURT: That's what he wants 22 you to answer, Dr. Wigand. 23 THE WITNESS: Well, I don't 24 need to answer that, Judge, to be honest</p>	<p>1 was there any other project that you were 2 assigned to discuss, any other specific -- 3 A. Biological testing of tobacco 4 products. 5 Q. Okay. Was that project, sir -- 6 was that a safer cigarette project in your 7 view? 8 A. Yes. 9 Q. Okay. 10 A. Any kind of a biological testing 11 is the industry euphemism for low risk. 12 Q. Okay. So biological testing 13 was, in your view, a safer cigarette 14 project? 15 A. Uh-huh. 16 Q. That was canceled, sir, by Tommy 17 Sandefur after this meeting? 18 A. It was canceled? What -- 19 Q. Was biological testing -- you 20 said yesterday, sir, that there was a 21 safer cigarette project that was stopped 22 after the Vancouver meeting. You told us 23 that Airbus was one, the primary one. 24 A. Uh-huh.</p>
<p>1 with you. I can read it and say here is 2 who presented it. 3 THE COURT: Well, I think what 4 his bottom line question is -- 5 THE WITNESS: Who presented 6 it? 7 THE COURT: No, he is trying to, 8 I believe, ask you: Were you assigned any 9 role as a presenter other than Airbus? 10 THE WITNESS: I was assigned 11 many roles. I was the chief scientific 12 officer for Brown & Williamson 13 Corporation, a major contributor to this 14 research policy group. I represented 15 Brown & Williamson's views at this meeting 16 and I was assigned a specific topic that I 17 agreed to, and that was Airbus. 18 BY MR. SHEFFLER: 19 Q. Thank you, sir. 20 A. And I involved myself in all the 21 topics. 22 Q. So you were assigned to discuss 23 the Airbus, the Airbus project. Was there 24 any other project, sir, on the agenda --</p>	<p>1 Q. I'm trying to see what other 2 topics that you discussed, what other 3 projects. 4 MR. ALDOCK: Could you direct 5 him to the testimony. That's not my 6 memory of the testimony. 7 MR. SHEFFLER: Well, he just 8 said it today. 9 MR. ALDOCK: No, he said it was 10 a project. 11 MR. SHEFFLER: He said it was 12 the primary project. He just testified 13 today, sir. 14 MR. ALDOCK: You opened by 15 saying he testified that, and you 16 testified that, and I think you were wrong 17 as to what he testified to. It was a 18 project. 19 MR. SHEFFLER: Well, you know, 20 whether he testified to it yesterday, we 21 can go back to the transcript. He just 22 testified to it today. You have the 23 daytime there. Go back and look. 24 MR. ALDOCK: When you opened</p>

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<p>1 with "you testified that" -</p> <p>2 MR. SHEFFLER: Well, your</p> <p>3 objection is kind of late, sir, but if you</p> <p>4 want to, you can go back and see what his</p> <p>5 testimony is. He testified it's a primary</p> <p>6 project.</p> <p>7 THE COURT: Rephrase your</p> <p>8 question.</p> <p>9 MR. ALDOCK: A primary project</p> <p>10 is fine.</p> <p>11 BY MR. SHEFFLER:</p> <p>12 Q. So Airbus was a primary project</p> <p>13 and you discussed that at the Vancouver</p> <p>14 meeting?</p> <p>15 A. Among other things, yes.</p> <p>16 Q. And you testified that Airbus</p> <p>17 was stopped by Tommy Sandefur because of</p> <p>18 litigation concerns?</p> <p>19 A. Airbus was stopped by Tom</p> <p>20 Sandefur, Earl Kohnhurst and Ray</p> <p>21 Pritchard.</p> <p>22 Q. And that was after the Vancouver</p> <p>23 meeting?</p> <p>24 A. Shortly thereafter.</p>	<p>1 asking you -</p> <p>2 A. This is a draft.</p> <p>3 Q. I am asking you, sir, what you</p> <p>4 addressed at that meeting. And it's your</p> <p>5 testimony that those are the only original</p> <p>6 minutes of that meeting. Right?</p> <p>7 A. They are not the original</p> <p>8 minutes. These are draft minutes of the</p> <p>9 meeting.</p> <p>10 Q. Okay. Those are the draft</p> <p>11 minutes of the meeting.</p> <p>12 A. Can I see the final edited</p> <p>13 minutes?</p> <p>14 Q. Do you have any other minutes of</p> <p>15 the meeting?</p> <p>16 A. No. Do you?</p> <p>17 Q. Do you, sir -- by looking at</p> <p>18 those minutes, can you tell me what</p> <p>19 specific project, safer cigarette project,</p> <p>20 did you discuss at that meeting as a</p> <p>21 presenter, as a representative of Brown &</p> <p>22 Williamson?</p> <p>23 A. I participated in all</p> <p>24 discussions, all -- I was specifically</p>
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<p>1 Q. Let's start with Airbus --</p> <p>2 strike that. Let's finish this exhibit,</p> <p>3 I'm sorry.</p> <p>4 What other project, safer</p> <p>5 cigarette project, besides Airbus and</p> <p>6 biological testing did you discuss at the</p> <p>7 Vancouver meeting as a presenter and</p> <p>8 subsequently Tommy Sandefur canceled?</p> <p>9 A. I would like to see the minutes</p> <p>10 again, the before minutes and the after</p> <p>11 minutes.</p> <p>12 Q. Here is the exhibit.</p> <p>13 A. Do you have the after minutes?</p> <p>14 The final, the edited the minutes? Do you</p> <p>15 have those?</p> <p>16 Q. What do you need those for, sir?</p> <p>17 A. I want to contrast what was in</p> <p>18 there and what was not in there because</p> <p>19 Mr. Sandefur and Mr. Pritchard and Mr.</p> <p>20 Kohnhurst were directly involved in having</p> <p>21 a lawyer change those minutes. May I</p> <p>22 please see those?</p> <p>23 Q. I move to strike that, I move to</p> <p>24 strike that comment. First of all, I am</p>	<p>1 presenting on biological testing.</p> <p>2 Q. Okay.</p> <p>3 A. Nicotine analogues.</p> <p>4 Q. Nicotine analogues?</p> <p>5 A. I discussed nicotine analogues</p> <p>6 at that meeting. That's my recollection</p> <p>7 of the meeting.</p> <p>8 Q. That's the one you just can't</p> <p>9 remember what the nicotine analogue was,</p> <p>10 right? Right, sir?</p> <p>11 A. That's your statement, not mine.</p> <p>12 Q. Do you remember what the</p> <p>13 nicotine analogue was you discussed?</p> <p>14 A. I can't recall it at this time.</p> <p>15 Q. You can't recall anything about</p> <p>16 nicotine analogues?</p> <p>17 A. I could give you a whole host of</p> <p>18 them, I probably could, if I wanted to sit</p> <p>19 down and go through a chemical book. This</p> <p>20 is eight years ago.</p> <p>21 Q. You have knowledge of a</p> <p>22 nonaddictive nicotine analogue?</p> <p>23 A. You can have substitution on</p> <p>24 various parts of the ring and get nicotine</p>

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<p>1 analogues.</p> <p>2 Q. You know of a nonaddictive</p> <p>3 nicotine analogue that you discussed or</p> <p>4 that anybody discussed?</p> <p>5 A. I don't know of a specific</p> <p>6 nonaddictive analogue that's been ever</p> <p>7 tested. Is there a possibility to have a</p> <p>8 nonaddicting nicotine analogue, a</p> <p>9 nonpharmacologically addictive analogue, I</p> <p>10 believe so.</p> <p>11 Q. We will get into that a little</p> <p>12 bit later. Right now please tell me what</p> <p>13 was the safer cigarette project that you</p> <p>14 presented on at this meeting as a</p> <p>15 representative of B & W and was</p> <p>16 subsequently canceled by Mr. Sandefur. We</p> <p>17 have got Airbus. We have got the</p> <p>18 biological testing.</p> <p>19 MR. ALDOCK: Your Honor, I think</p> <p>20 there is no foundation here. He did not</p> <p>21 say that there was a specific project</p> <p>22 canceled as a result of Tommy Sandefur. I</p> <p>23 can't find it.</p> <p>24 MR. SHEFFLER: Your Honor, he</p>	<p>1 project?</p> <p>2 A. Yes, it was. In my context, it</p> <p>3 was a safer cigarette.</p> <p>4 Q. That was a safer cigarette</p> <p>5 project?</p> <p>6 A. To understand that whatever</p> <p>7 additives are used in the context of</p> <p>8 cigarettes that the biological fates be</p> <p>9 understood.</p> <p>10 Q. Okay. And there was no --</p> <p>11 A. Can I finish?</p> <p>12 Q. Sure.</p> <p>13 A. I would like to finish, thank</p> <p>14 you.</p> <p>15 Q. I thought you were done.</p> <p>16 A. No, I wasn't. The industry</p> <p>17 continues to use and still uses additives</p> <p>18 that are GRAS and FEMA proof. And they</p> <p>19 are absolutely no --</p> <p>20 THE COURT: Hold on a</p> <p>21 second.</p> <p>22 THE WITNESS: GRAS, G-R-A-S.</p> <p>23 Generally Recognized as Safe, and FEMA.</p> <p>24 Flavor and Extracts Manufacturers</p>
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<p>1 testified to that at the very beginning of</p> <p>2 the deposition. If we want to go back</p> <p>3 through the record, you can find it.</p> <p>4 MR. ALDOCK: No, you testified</p> <p>5 to it, he didn't.</p> <p>6 THE COURT: Dr. Wigand, have you</p> <p>7 not said that the primary one that was</p> <p>8 canceled was Airbus?</p> <p>9 THE WITNESS: I said one of the</p> <p>10 projects that was canceled was Airbus.</p> <p>11 THE COURT: Right. Then it's</p> <p>12 fair game to ask what other projects were</p> <p>13 canceled. Go right ahead, counsel.</p> <p>14 THE WITNESS: No biological</p> <p>15 activity on a domestic -- in the United</p> <p>16 States.</p> <p>17 BY MR. SHEFFLER:</p> <p>18 Q. That was a project, sir?</p> <p>19 A. That was something that was</p> <p>20 discussed intimately with Mr. Sandefur,</p> <p>21 Mr. Pritchard, Mr. Kohnburn in terms of</p> <p>22 reducing and bringing in a robustness in</p> <p>23 terms of additives that were used.</p> <p>24 Q. Sir, was that a safer cigarette</p>	<p>1 Association, that are generally tested for</p> <p>2 both ingestion and topical application.</p> <p>3 The industry uses that without</p> <p>4 understanding what the pyrolytics, that</p> <p>5 is, how these additives are burned, such</p> <p>6 as glycerol burns into acrolein, and</p> <p>7 acrolein being a carcinogen.</p> <p>8 Q. Acrolein is a carcinogen, sir?</p> <p>9 A. Yes.</p> <p>10 Q. Do you have any evidence that</p> <p>11 acrolein was recognized as a carcinogen by</p> <p>12 anyone at the time that you were at B & W?</p> <p>13 A. I recognize it now.</p> <p>14 Q. Does anybody -- does anybody say</p> <p>15 that acrolein was a carcinogen at the time</p> <p>16 you were at B & W? Who told you that?</p> <p>17 A. I can't recall.</p> <p>18 Q. Where did you get the</p> <p>19 information?</p> <p>20 A. I would have to go back and</p> <p>21 review my notes or the literature on that.</p> <p>22 Q. Did you ever look at the Surgeon</p> <p>23 General's reports at the time you were at</p> <p>24 B & W?</p>

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<p>1 A. I believe I did.</p> <p>2 Q. Did you look to see what the</p> <p>3 Surgeon General said at that time about</p> <p>4 acrolein?</p> <p>5 A. What did he say?</p> <p>6 Q. Did you look?</p> <p>7 A. I probably did, but I don't</p> <p>8 recall it right now.</p> <p>9 Q. Would the Surgeon General know</p> <p>10 whether or not acrolein was a carcinogen?</p> <p>11 A. I would imagine the Surgeon</p> <p>12 General as well as others would know that</p> <p>13 acrolein was a carcinogen.</p> <p>14 Q. You would accept what the</p> <p>15 Surgeon General's review of the literature</p> <p>16 in 1989 said about acrolein?</p> <p>17 A. And subsequent to that. And I</p> <p>18 would also ask you to show me the NTP</p> <p>19 program. I would also like to show you</p> <p>20 all the published literature on acrolein.</p> <p>21 Q. Did the NTP ever do a program to</p> <p>22 your knowledge on acrolein?</p> <p>23 A. I would have to look at it</p> <p>24 again.</p>	<p>1 A. Are we marking the whole book or</p> <p>2 just a page?</p> <p>3 MR. ALDOCK: Let's mark the</p> <p>4 whole book, otherwise we will not know</p> <p>5 where the page comes from. Let's mark it</p> <p>6 all.</p> <p>7 MR. SHEFFLER: Do you want to</p> <p>8 mark the book. We will mark the book.</p> <p>9 MR. ALDOCK: Sure.</p> <p>10 THE COURT: Hold up a minute.</p> <p>11 -----</p> <p>12 Thereupon, Wigand Exhibit No. 22</p> <p>13 was marked for purposes of</p> <p>14 identification.</p> <p>15 -----</p> <p>16 BY MR. SHEFFLER:</p> <p>17 Q. Sir, if you would turn to page</p> <p>18 81. 81 comes way before those pages.</p> <p>19 A. I'm looking at the index. You</p> <p>20 gave me the whole book; did you not?</p> <p>21 Q. Not to read the whole book, I</p> <p>22 want to direct your attention to Table V,</p> <p>23 which is the major constituents of the</p> <p>24 vapor phase of the mainstream smoke of</p>
<p>1 Q. Do you know?</p> <p>2 A. I'm not sure at this time. Have</p> <p>3 they?</p> <p>4 Q. Are you relying upon the NTP's</p> <p>5 report on acrolein for your testimony in</p> <p>6 this case?</p> <p>7 A. No, I'm relying on the</p> <p>8 scientific, the body of scientific</p> <p>9 literature that's out there. And NTP,</p> <p>10 Surgeon General reports, and there is a</p> <p>11 body of literature.</p> <p>12 Q. Okay. And you reviewed the</p> <p>13 Surgeon General's report, of course?</p> <p>14 A. At the time I did.</p> <p>15 Q. Do you know the Surgeon</p> <p>16 General's reports were periodically</p> <p>17 issued?</p> <p>18 A. Yes, I do.</p> <p>19 Q. Do you know that they were in</p> <p>20 the library of B & W?</p> <p>21 A. I imagine they are.</p> <p>22 Q. Okay. Sir, let me show you what</p> <p>23 we will mark for the record as Exhibit No.</p> <p>24 22.</p>	<p>1 nonfiltered cigarettes. It's page 81. Do</p> <p>2 you see it there?</p> <p>3 A. Um-hum.</p> <p>4 Q. Do you see acrolein listed</p> <p>5 there? Look at the bottom of the table,</p> <p>6 sir, you will see acrolein listed.</p> <p>7 A. Um-hum.</p> <p>8 Q. Sir, if you would turn over to</p> <p>9 table VII.</p> <p>10 A. On page?</p> <p>11 Q. Page 86. Tumorigenic agents in</p> <p>12 tobacco and tobacco smoke, table VII. do</p> <p>13 you see that?</p> <p>14 A. Um-hum.</p> <p>15 Q. Tumorigenic is carcinogenic; is</p> <p>16 it not?</p> <p>17 A. It could be considered</p> <p>18 carcinogenic.</p> <p>19 Q. Where do you see acrolein on</p> <p>20 that table, sir?</p> <p>21 A. I don't see it. This happens to</p> <p>22 be a 1989 report. Are there any</p> <p>23 subsequent reports?</p> <p>24 Q. Did I not ask you what the</p>

<p style="text-align: right;">Page 338</p> <p>1 thinking of the Surgeon General was in 2 1989? 3 A. I can't recall all the Surgeon 4 General said in 1989. 5 Q. Okay. 6 A. But if you give me an 7 opportunity to re-read the book, I would 8 be able to give it to you in chapter and 9 verse. 10 Q. You can re-read the book anytime 11 you want, sir. It's marked as an exhibit 12 to the deposition. You can read it 13 tonight as your leisure. 14 When you testified earlier that 15 in 1989 acrolein was recognized as a 16 carcinogen, that was false, wasn't it? 17 A. When you say it's false, as only 18 relevant to this document or is this in 19 the total scientific literature? 20 Q. What is the Surgeon General's 21 report, sir? 22 A. Does this represent the sum 23 total of scientific literature? 24 THE COURT: Dr. Wigand, please</p>	<p style="text-align: right;">Page 340</p> <p>1 Q. Now, sir, getting back to the 2 projects, the cigarette, the safer 3 cigarette project, that you said Tommy 4 Sandefur canceled. Have you told us all 5 of the projects that Tommy Sandefur 6 canceled as a result of litigative 7 concerns? 8 A. I didn't say Mr. Sandefur only. 9 I said Mr. Kohnhurst, Mr. Pritchard and 10 Mr. Sandefur. 11 Q. Let's talk about B & W 12 management. Okay? 13 A. That's better. 14 Q. B & W management, according to 15 you, canceled Airbus biological activity 16 and testing after the Vancouver meeting? 17 A. They not only canceled by 18 removing it out from the B & W, but they 19 put it offshore and renamed it. 20 Q. Okay. What other programs, what 21 other projects, but the two you mentioned, 22 did B & W management cancel after the 23 Vancouver meeting? 24 A. Any investigation into</p>
<p style="text-align: right;">Page 339</p> <p>1 don't ask the questions. 2 Q. Sir, isn't the 1989 Surgeon 3 General's report a review of the 4 literature, the scientific literature on 5 smoking and health, up until the 1989 6 Surgeon General's report? 7 A. It may be. I'm sure there are 8 other scientific reports that are not 9 enclosed in here. Is that what it says? 10 Q. Yes, it does. 11 A. Where does it say that? 12 Q. Do you, sir -- had you read the 13 Surgeon General's report in 1989? 14 A. Yes, I did. 15 Q. You read it in 1989? 16 A. 1989. 17 Q. So you read in 1989 that 18 acrolein was in smoke but it was not 19 regarded as a carcinogen by the Surgeon 20 General; right? 21 A. Maybe at that time. 22 Q. Okay. And 1989 was the time the 23 Vancouver minutes were drafted, correct? 24 A. I believe so.</p>	<p style="text-align: right;">Page 341</p> <p>1 environmental tobacco smoke. 2 Q. That was a safer cigarette 3 project that B & W canceled after the 4 Vancouver meeting? 5 A. No, it has to relate to smoking 6 and health safety, a safer cigarette. 7 Q. Let me back up. What I would 8 like to focus on at this time in this 9 deposition is your statement to CBS 60 10 Minutes. 11 A. Which statement? 12 Q. Your statement, sir, that there 13 was a safer cigarette project that was 14 abandoned after the Vancouver meeting. 15 A. I think we can turn to page 5, I 16 believe, is the 60 Minutes transcript. 17 And I believe it starts out with -- 18 Q. What is that exhibit, sir? 19 A. The 60 Minutes transcript. 20 MR. WALLACE: What's the number? 21 THE WITNESS: Exhibit 9. 22 Q. Okay. 23 A. Page 5. Which is a continuation 24 of the discussion of lawyer involvement</p>

<p>Page 342</p> <p>1 and rewriting scientific minutes that they 2 never attended. 3 MR. SHEFFLER: Move to strike. 4 THE COURT: Sustained. 5 THE WITNESS: And Mr. Wallace's 6 question, he rewrote the minutes of this 7 research meeting with all the research 8 heads of B.A.T. Industries? That's 9 correct. In order to sanitize it in a 10 sense? Sanitize it as well as reduce any 11 type of exposure associated with 12 discussing a safer cigarette. When you 13 say you are going to have a safer 14 cigarette. Um-hum. Mr. Wallace. It sort 15 of takes everything else that you have 16 available to say it's unsafe, and that, 17 from a product liability point of view, 18 gave the lawyers great concern. 19 I think that's what I said. 20 Q. I know you said that. But what 21 I was asking you was, what was the safer 22 cigarette project that you claim to have 23 worked on for nine months while at B & W 24 that was canceled?</p>	<p>Page 34</p> <p>1 with safer cigarettes that were canceled 2 after the Vancouver meeting. And you've 3 named three. 4 And he is saying now, is that. 5 Are there any additional. And I think you 6 said, for now that's it. He now wants to 7 explore those three, I presume. 8 Q. Exactly, if I can. If I can 9 direct your attention, let's talk about 10 Airbus first. 11 Now, do you recall, sir, going 12 to a meeting about two months after you 13 started work at B & W that addressed the 14 project, Airbus? 15 A. Do I recall a meeting? I had a 16 lot of meetings when I first joined Brown 17 & Williamson. 18 Q. This was approximately in 19 February of 1989; do you recall that? 20 A. I believe there may have been a 21 meeting. 22 MR. SHEFFLER: Will you mark 23 this as the next exhibit, please? 24 -----</p>
<p>Page 343</p> <p>1 Now, also -- okay? You also 2 testified today about three of those. You 3 testified about Airbus, you testified 4 about biological activity and you 5 testified about additives. And I'm asking 6 you, sir, is that it? 7 A. For now it is. But that's not -- 8 Q. All right. Let's go to Airbus 9 first then. Let's go to Airbus first. 10 You claim that Airbus was canceled -- 11 MR. ALDOCK: Wait a minute. He 12 said those were three parts of the safer 13 cigarette and that things were canceled. 14 And you keep characterizing his testimony 15 differently than he states it. 16 THE COURT: No, the question is, 17 is that it. And I think Dr. Wigand said, 18 for now that's it. So he wants -- 19 MR. ALDOCK: The "it" through 20 was the question. What the "it" was, 21 Judge, the "it" is the safer cigarette. 22 THE COURT: He is asking 23 repeatedly is there any other programs, 24 Dr. Wigand, that you can think of dealing</p>	<p>Page 34</p> <p>1 Thereupon, Wigand Exhibit No. 23 2 was marked for purposes of 3 identification. 4 ----- 5 THE COURT: Did we ever 6 establish what month the Vancouver meeting 7 was in 1989? 8 MR. SHEFFLER: It was in 9 September, wasn't it? 10 THE WITNESS: September. 11 THE COURT: September, okay. 12 THE COURT: So you are asking 13 about February of 1989 right now? 14 MR. SHEFFLER: Right. About six, 15 seven months before the Vancouver meeting. 16 MR. ALDOCK: Is that 23? 17 THE COURT: Yes. 18 (Discussion held off the record) 19 BY MR. SHEFFLER: 20 Q. All right, sir. You see that 21 this document that we have marked as an 22 exhibit is entitled Conclusions from the 23 Airbus Research Meeting, 16th of February, 24 1989; do you see that?</p>

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<p>1 A. Yes, I do.</p> <p>2 Q. Now, if Airbus was a safer</p> <p>3 cigarette project, and if B & W, as you</p> <p>4 say, had purged all of its files of</p> <p>5 documents relating to safer cigarette</p> <p>6 projects after the Vancouver meeting, this</p> <p>7 document should have been purged,</p> <p>8 shouldn't it?</p> <p>9 A. What is this document part of?</p> <p>10 It's obviously part of a larger document.</p> <p>11 MR. ALDOCK: I object to the</p> <p>12 question, your Honor. It's repeated. He</p> <p>13 loads it up with what was purged and what</p> <p>14 was not purged. The witness never said</p> <p>15 that in the prior deposition.</p> <p>16 Q. Doctor --</p> <p>17 MR. ALDOCK: Ask him a question,</p> <p>18 don't load it up.</p> <p>19 Q. I will ask him a question. Mr.</p> <p>20 Wigand, is it not your claim that B & W</p> <p>21 purged its files of all documents that</p> <p>22 relate to safer cigarette research</p> <p>23 projects?</p> <p>24 A. Is it my claim that B & W purged</p>	<p>1 Q. Who?</p> <p>2 A. Mr. Bullis was in there.</p> <p>3 Q. Did he know where your files</p> <p>4 know?</p> <p>5 A. I have absolutely no idea what</p> <p>6 Mr. Bullis -- obviously he was in office</p> <p>7 before --</p> <p>8 Q. I'm asking you, sir, who would</p> <p>9 know where your files were. Would your</p> <p>10 secretary know?</p> <p>11 A. I would imagine my secretary</p> <p>12 would know.</p> <p>13 Q. And who was your secretary?</p> <p>14 A. Martha Thomas.</p> <p>15 Q. She would know where your files</p> <p>16 were and how to locate your files?</p> <p>17 A. As well as any other secretary</p> <p>18 on the executive floor.</p> <p>19 Q. Now, sir, do you see that</p> <p>20 present at this meeting, the conclusions</p> <p>21 of which was drafted on 16th of February</p> <p>22 1989 or thereabouts, was one J. Wigand; do</p> <p>23 you see that?</p> <p>24 A. Yes.</p>
Page 347	Page 34
<p>1 all files?</p> <p>2 THE COURT: All documents.</p> <p>3 THE WITNESS: All documents.</p> <p>4 THE COURT: Dealing with safer</p> <p>5 cigarettes, yes or no?</p> <p>6 THE WITNESS: I can't tell you</p> <p>7 they purged all files. I can tell you</p> <p>8 that the R & D files, at least my files,</p> <p>9 were purged of all reference to safer</p> <p>10 cigarette.</p> <p>11 Q. Okay. Sir --</p> <p>12 A. Whose file is this from?</p> <p>13 Q. We will find that out. Because</p> <p>14 it has a Bates number and we will find out</p> <p>15 where it came from. It may very well have</p> <p>16 come from your file for all I know. We'll</p> <p>17 find that out, sir.</p> <p>18 By the way, who would know where</p> <p>19 your files were when you left B & W? Who</p> <p>20 would be the best person to know where</p> <p>21 your files were located at B & W?</p> <p>22 A. Who would know, the best --</p> <p>23 there were a number of people in my office</p> <p>24 while I was being terminated.</p>	<p>1 Q. So you were at this meeting?</p> <p>2 A. Two months after joining the</p> <p>3 company.</p> <p>4 Q. Okay.</p> <p>5 A. A month and a half.</p> <p>6 Q. So does this document reflect --</p> <p>7 strike that.</p> <p>8 Does this document refresh your</p> <p>9 recollection that you attended a meeting</p> <p>10 on or about the 16th of February, 1989</p> <p>11 that addressed the Airbus issue?</p> <p>12 A. This is the conclusions from an</p> <p>13 Airbus research meeting, this is a part</p> <p>14 of, I assume, a larger document. That's</p> <p>15 an excerpt from the document.</p> <p>16 Q. All right, sir. Let's go through</p> <p>17 the conclusions of this meeting. Look at</p> <p>18 the first conclusion. Do you see that?</p> <p>19 It says B & W believes that there is a</p> <p>20 market opportunity for a Premier-type</p> <p>21 product with traditional tastes and aroma</p> <p>22 properties; do you see that?</p> <p>23 A. Um-hum.</p> <p>24 Q. So B & W initiated this product,</p>

<p style="text-align: right;">Page 350</p> <p>1 Airbus, this project, as a response to a 2 competitor's product; did it not? 3 A. Yes. 4 Q. And that product was Premier, 5 correct? 6 A. Yes. 7 Q. And Premier was known as an 8 alternatively engineered cigarette, wasn't 9 it? 10 A. Alternatively engineered? An 11 engineered cigarette, yes. 12 Q. It was initiated at the time 13 because it was thought that there might be 14 a market for a Premier type product, 15 right? There might be a consumer market 16 for such a product. Wasn't that why B & W 17 initiated this? 18 A. No. B & W initiated it as a 19 direct response to the competitive threat 20 posed by RJR. 21 Q. Okay. That's fine. B & W 22 believed, did it not, that any new product 23 had to be acceptable to consumers; isn't 24 that right?</p>	<p style="text-align: right;">Page 351</p> <p>1 retail? 2 A. And it says increasingly 3 negative reaction among regulatory, FDA, 4 FTC - 5 Q. I'm sorry? Increasingly -- 6 A. Negative reaction of regulatory, 7 Federal drug agencies, and Federal Trade 8 Commission and restructuring of RJR 9 Q. So there were three reasons why 10 Premier was in trouble, wasn't there? 11 One, consumers didn't like it, correct? 12 There was no market for it; isn't that 13 correct? 14 A. In Canada, Germany and 15 Switzerland. 16 Q. And consumers didn't like it in 17 America, did they? 18 A. Where does it say that in this 19 document? 20 Q. Premier was sold in America, 21 wasn't it? 22 A. Wait a minute. The research 23 that you are quoting here says consumer 24 research in Canada, Germany and</p>
<p style="text-align: right;">Page 351</p> <p>1 A. Or meet regulatory constraints. 2 Q. It had to do both, didn't it? 3 A. Among other things, yes. 4 Q. Okay. Doesn't the memo go on to 5 state that consumer research in other 6 countries had rejected the concept of a 7 cigarette like Premier? Isn't that what 8 it says in paragraph two? 9 A. It says consumer research in 10 Canada, Germany, and Switzerland clearly 11 concludes that mechanical devices such as 12 Premier are rejected. 13 Q. Clearly include, was it? 14 A. Clearly concludes that 15 mechanical devices such as Premier are 16 rejected even at the concept stage. 17 Q. And doesn't the memo go on to 18 say, sir, in paragraph 3, that Premier 19 itself, is in deep trouble. Do you see 20 that? Paragraph 3, sir, number 3; do you 21 see that? 22 A. I can read that, yes. 23 Q. Doesn't it say it's in deep 24 trouble because of consumer rejection at</p>	<p style="text-align: right;">Page 35</p> <p>1 Switzerland. It doesn't say anything 2 about the United States. 3 Q. We dealt with that, sir. That 4 was with respect to devices such as 5 Premier. Now, we didn't do consumer 6 research on Premier in Canada, Germany and 7 Switzerland because Premier was not sold 8 in Canada, Germany and Switzerland, was 9 it? 10 A. In 1989 it had not been 11 introduced in Canada, Germany or 12 Switzerland. 13 Q. But it had been introduced in 14 America, hadn't it? 15 A. Yes. 16 Q. And there was consumer rejection 17 at retail of Premier; was there not? 18 A. I don't know. Where is the 19 study that supports that from the United 20 States. 21 Q. Wasn't that the conclusion of 22 the meeting in February 16, 1989, that you 23 attended? Wasn't it concluded by B & W's 24 management, including you, sir, that</p>

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<p>1 Premier itself is in deep trouble due to, 2 A, consumer rejection at retail? 3 A. Among increasingly negative 4 reaction among regulatory -- regulators, 5 especially the FDA and FTC. 6 Q. That's true. That was another 7 reason. There were three reasons. 8 A. Wait a minute. It does not say 9 anything about the United States here. It 10 says Premier, itself, is in deep trouble. 11 Does that mean the United States? 12 Q. Well, sir, was Premier in deep 13 trouble in Canada? 14 A. I don't know. 15 Q. It wasn't sold there, so how 16 could it be in deep trouble there? 17 A. Okay. 18 Q. Was Premier in deep trouble in 19 any country other than America? 20 A. I don't know. But the consumer 21 research was done in Canada, Germany and 22 Switzerland. 23 Q. Was Premier rejected at consumer 24 retail in any country other than America?</p>	<p>1 delivery device, and Premier was claimed 2 to be a nicotine delivery device. 3 Q. Not by RJR? 4 A. It wasn't? 5 Q. Didn't RJR -- didn't RJR oppose 6 the quote nicotine delivery device 7 euphemism for Premier; didn't they oppose 8 that? 9 A. They claimed it in one of their 10 patents. It was a nicotine delivery 11 device. 12 Q. Yes, we'll get to that. 13 What patent was that, by the 14 way? 15 A. Which number? 16 Q. When was the patent filed? 17 A. I can't recall. 18 Q. It was a patent for Premier, 19 though? 20 A. Or Premier Light. 21 Q. It was a patent for Premier, 22 though? 23 A. It's an RJR patent. 24 Q. Was it a patent for Premier?</p>
<p>1 A. No. 2 Q. Okay. Now let's go to B, 3 increasingly negative reaction among 4 regulators. You told us that one of the 5 concerns in introducing the product by B & 6 W was regulatory concern, wasn't it? If 7 the regulators were not going to allow the 8 product to be sold as a cigarette, that 9 had severe restrictions on the ability of 10 B & W to market it, didn't it? 11 A. I believe I said that yesterday. 12 Q. At this time, early 1989, the 13 FDA was considering whether or not Premier 14 was going to fall under its regulatory 15 aegis; isn't that true? 16 A. I think you ought to re-do to 17 the question for me. 18 Q. Isn't it true that the FDA was 19 looking at regulating Premier and that RJR 20 was very concerned that its product would 21 be regulated by FDA and, therefore, have 22 to be withdrawn? Isn't that true? 23 A. I think the FDA was looking or 24 was considering looking at any nicotine</p>	<p>1 A. I can't recall. It was a 2 Premier Light. 3 Q. Would you tell me, sir, if you 4 can recall this. Do you recall reviewing 5 patents for Premier? 6 A. I reviewed a lot of patents. 7 Q. Do you recall reviewing patents 8 for Premier? 9 A. My best recollection is I 10 reviewed patents related to Premier. 11 Q. Did you review patents for 12 Premier? 13 A. Specifically? You mean the word 14 Premier across the top? 15 Q. I'm asking you, sir, if you 16 reviewed patents for Premier. 17 A. I would say I reviewed patents 18 in the general area of a cigarette design 19 such as Premier, yes. 20 Q. Did you review patents for 21 Premier? 22 MR. ALDOCK: I think he has 23 answered the question. 24 Q. I don't think he has.</p>

<p>Page 358</p> <p>1 THE COURT: He hasn't. Have 2 you? Did you or did you not? 3 A. Review patents specifically as 4 directed to Premier. 5 Q. Yes. 6 A. Yes, I did. 7 Q. Okay. And those patents said 8 that Premier was a nicotine delivery 9 device? 10 A. I think it was suggested as a 11 nicotine delivery device, I would have to 12 look at the patent again -- patents. 13 Q. Sir, you made the statement that 14 RJR said Premier was a nicotine delivery 15 device in a patent. I'm simply asking 16 you, sir, as you reflect now, did, in 17 fact, RJR in its patent for Premier say it 18 was a nicotine delivery device, yes or no? 19 A. I would have to look at the 20 patent again. 21 Q. So you don't know -- 22 A. And refresh my memory. 23 Q. Look at number 4, sir. 24 Paragraph 4. Wasn't another problem with</p>	<p>Page 36</p> <p>1 research being performed at B & W had 2 demonstrated that there was a need for 3 more basic research, a more basic research 4 done on those issues? 5 A. I think any project needs to 6 have more basic research as a continuing 7 involvement. This is in February of 1989. 8 Q. Sir, in February of 1989, it 9 was recognized that Airbus, the project 10 and the work done at B & W, which was 11 prototype work, was it not? 12 A. It was early prototype work. 13 Q. What's prototype work? 14 A. Pre-production. 15 Q. Okay. Prototype work is trying 16 to make a product; is it not? 17 A. I would say it's one stage 18 removed from manufacturing. It's a stage 19 before commercial testing. 20 Q. Okay. And at the stage before 21 commercial testing that B & W was at, they 22 found that they couldn't make the product; 23 isn't that right? Didn't they have 24 trouble, sir --</p>
<p>Page 359</p> <p>1 the Airbus project that was discussed at 2 the February 16th, 1989 meeting -- was the 3 fact that there was need for more basic 4 research? Wasn't that identified as one 5 of the problems? 6 A. Who wrote these minutes? Was 7 this written by a technical person? I 8 don't know who wrote the minutes. 9 Q. Well, sir, it doesn't say who 10 wrote the minutes. All it says is that 11 these are the conclusions from the Airbus 12 research meeting at which you were 13 present. Was not one of the concerns at 14 this meeting that research on Airbus has 15 not produced the prototype product. It 16 has highlighted the need for basic work on 17 nicotine elution, aerosol generation, heat 18 transfer, flavor development, et cetera. 19 Does it not say that? 20 A. That's what the words say on the 21 piece of paper. 22 Q. Is that not true? At the time 23 that this meeting was held in February of 24 1989, it was recognized that the prototype</p>	<p>Page 36</p> <p>1 A. This is February of 1989; this 2 is not late 1989. This is maybe an early 3 conclusion. 4 Q. Sir, wasn't it true that as of 5 February, 1989, the prototypes that B & W 6 was working on, the Ellis concept, a 7 sequential device, had problems, did it 8 not? 9 A. Every research project has 10 problems. 11 Q. Wasn't it technologically 12 impossible to construct an acceptable 13 moving furnace device which was the 14 sequential product? Wasn't that 15 technologically impossible at this time? 16 A. No. 17 Q. It wasn't? 18 A. No. 19 Q. It wasn't technologically 20 impossible? 21 A. No. Is that what this says? I 22 don't think so. 23 Q. Wasn't it technologically 24 impossible to do that at this time?</p>

<p style="text-align: right;">Page 362</p> <p>1 A. No.</p> <p>2 Q. That's your testimony. Would</p> <p>3 you turn to the minutes, the original</p> <p>4 minutes of the Vancouver meeting which is</p> <p>5 Exhibit 20, page 9.</p> <p>6 A. Can we deal with the final</p> <p>7 minutes? This is the draft minutes.</p> <p>8 Q. Well, sir, didn't you say the</p> <p>9 final minutes were vetted or edited or</p> <p>10 something else?</p> <p>11 A. Um-hum.</p> <p>12 Q. Are the final minutes a more</p> <p>13 accurate, sir, reflection of the meeting</p> <p>14 than these minutes?</p> <p>15 A. They sure are not.</p> <p>16 Q. Okay. These minutes are a more</p> <p>17 accurate reflection of what happened at</p> <p>18 the meeting?</p> <p>19 A. They come closer. These are the</p> <p>20 draft minutes that I had not made any</p> <p>21 comments on.</p> <p>22 Q. You had made any comments on</p> <p>23 these. But they are the draft minutes</p> <p>24 prepared by who?</p>	<p style="text-align: right;">Page 364</p> <p>1 there are the problems associated with</p> <p>2 project Airbus. Problems doesn't mean</p> <p>3 it's technologically impossible.</p> <p>4 Q. Then why does it say here in the</p> <p>5 description of --</p> <p>6 A. I don't know. I didn't write</p> <p>7 the minutes of the meeting.</p> <p>8 Q. Okay. So you are telling me,</p> <p>9 sir, that when it says, "The project</p> <p>10 Airbus itself had been terminated because</p> <p>11 it was technologically impossible to</p> <p>12 construct acceptable moving furnace</p> <p>13 devices," somebody wrote that, but you</p> <p>14 never said that?</p> <p>15 A. One approach to Airbus was</p> <p>16 definitely moving furnace.</p> <p>17 Q. Sir --</p> <p>18 A. One approach was the Ellis</p> <p>19 patent.</p> <p>20 Q. Can you answer my question?</p> <p>21 Somebody wrote this, but you never said</p> <p>22 it?</p> <p>23 THE COURT: I think the question</p> <p>24 is, did you, in fact, say that,</p>
<p style="text-align: right;">Page 363</p> <p>1 A. I believe Ray Thornton and Alan</p> <p>2 Heard.</p> <p>3 Q. Let's see what they said you</p> <p>4 said about Airbus. You see where it says,</p> <p>5 the project Airbus, itself, had been</p> <p>6 terminated, because it was technologically</p> <p>7 impossible to construct acceptable moving</p> <p>8 furnace devices; do you see that?</p> <p>9 A. Is that the only way to solve</p> <p>10 the problem?</p> <p>11 Q. Sir, do you see that?</p> <p>12 A. Um-hum.</p> <p>13 Q. Now, it starts off -- the very</p> <p>14 top of this paragraph it starts off with</p> <p>15 J.W. Who is J.W.?</p> <p>16 A. That's me.</p> <p>17 Q. Okay. So what happened here was</p> <p>18 a description of your presentation about</p> <p>19 Airbus?</p> <p>20 A. That's what it says.</p> <p>21 Q. Okay. Sir, was it not</p> <p>22 technologically impossible to construct</p> <p>23 acceptable moving furnace devices in 1989?</p> <p>24 A. I think what it says is that</p>	<p style="text-align: right;">Page 365</p> <p>1 Dr. Wigand?</p> <p>2 THE WITNESS: I may or may not</p> <p>3 have said it, sir. I mean this is a draft</p> <p>4 set of minutes that was set out to me for</p> <p>5 comment. These draft minutes asked me to</p> <p>6 technically validate what was said at the</p> <p>7 meeting. I never had an opportunity to</p> <p>8 put the appropriate draft back. That was</p> <p>9 usurped by management and by the lawyers.</p> <p>10 MR. SHEFFLER. Sir, I move to</p> <p>11 strike all of that because it's not</p> <p>12 responsive, your Honor.</p> <p>13 THE WITNESS: It's the truth.</p> <p>14 Don't you like the truth? I thought</p> <p>15 that's what we were here for.</p> <p>16 Q. I am trying to seek the truth,</p> <p>17 sir. Believe me, we are trying</p> <p>18 desperately to seek the truth.</p> <p>19 THE COURT: Dr. Wigand, if you</p> <p>20 will answer his question, please.</p> <p>21 Q. The truth is, sir, that in 1989</p> <p>22 it was technologically impossible to</p> <p>23 construct a moving furnace device. When</p> <p>24 they tried to make the cigarette, it was</p>

<p style="text-align: right;">Page 366</p> <p>1 too hot to hold, wasn't it?</p> <p>2 A. It doesn't say that here. I</p> <p>3 don't know that.</p> <p>4 Q. You don't know that? Weren't</p> <p>5 you the head of R & D at the time in 1989?</p> <p>6 A. Um-hum.</p> <p>7 Q. Weren't you aware in 1989 about</p> <p>8 the research that was ongoing at R & D?</p> <p>9 A. I was aware what was going on at</p> <p>10 R & D here and abroad.</p> <p>11 Q. Didn't you know, sir, that in</p> <p>12 February of 1989 at a meeting you</p> <p>13 attended, one of the conclusions was that</p> <p>14 the search -- from the search for</p> <p>15 potential prototypes, which is what B & W</p> <p>16 was doing, it is unlikely that the</p> <p>17 concentric tube, paren, Ellis, E-L-L-I-S,</p> <p>18 hyphen type, close paren, concept can be</p> <p>19 made to work. You knew that conclusion,</p> <p>20 didn't you? Conclusion at number 5, the</p> <p>21 first page of the conclusions from the</p> <p>22 Airbus research meeting. That's back in</p> <p>23 --</p> <p>24 A. Wait a minute. Let's read the</p>	<p style="text-align: right;">Page 36</p> <p>1 technologically impossible. In fact, the</p> <p>2 project was continued as project Nova.</p> <p>3 Q. So you said something to these</p> <p>4 research and development people at this</p> <p>5 Vancouver meeting that you didn't believe?</p> <p>6 MR. ALDOCK: He didn't say -- he</p> <p>7 said what you find in the minutes. He has</p> <p>8 categorically said it the other way.</p> <p>9 Q. All right. Sir, let me ask</p> <p>10 you -- well, your counsel is helping you</p> <p>11 there.</p> <p>12 THE COURT: Which comment are</p> <p>13 you, which answer are you --</p> <p>14 MS. WERTHEIMER: I'm directing</p> <p>15 him to the page.</p> <p>16 MR. ALDOCK: He has not signed</p> <p>17 on to this being an accurate statement and</p> <p>18 you point to this as being the</p> <p>19 technologically impossible paragraph.</p> <p>20 THE COURT: I think his answer</p> <p>21 was he may or may not have said it.</p> <p>22 MS. WERTHEIMER: That's why I</p> <p>23 thought he needed to be directed to the</p> <p>24 page where he addressed that issue.</p>
<p style="text-align: right;">Page 367</p> <p>1 words very accurately here. I don't know</p> <p>2 whether a scientist wrote these minutes or</p> <p>3 these conclusions, for one. It says,</p> <p>4 "Search for potential prototypes, it is</p> <p>5 unlikely," it didn't say impossible. It</p> <p>6 says it is unlikely that the concentric</p> <p>7 tube concept can be made to work.</p> <p>8 Q. Isn't that what I read to you?</p> <p>9 A. It's a sequential device.</p> <p>10 Q. Isn't that I what I read to you,</p> <p>11 sir?</p> <p>12 A. Unlikely does not say</p> <p>13 technologically impossible.</p> <p>14 Q. No, those were your words or</p> <p>15 those were the words attributed to you at</p> <p>16 the Vancouver meeting. This says it was</p> <p>17 unlikely. The words attributed to you is</p> <p>18 technologically impossible.</p> <p>19 Now, did you learn more from</p> <p>20 February to Vancouver or were you gilding</p> <p>21 the lilly when you said it was</p> <p>22 technologically impossible or was it in</p> <p>23 fact technologically impossible?</p> <p>24 A. I don't believe it was</p>	<p style="text-align: right;">Page 36</p> <p>1 Q. Let's hammer this down for a</p> <p>2 second if we could. Did you or did you</p> <p>3 not say at this meeting in Vancouver that</p> <p>4 the Airbus project itself had been</p> <p>5 terminated because it was technologically</p> <p>6 impossible to construct an acceptable</p> <p>7 moving furnace device. Yes or no?</p> <p>8 A. I say one approach to the</p> <p>9 project Airbus was a moving furnace.</p> <p>10 Other approaches to Airbus were sequential</p> <p>11 devices more like Premier.</p> <p>12 Q. We will get to that in a minute.</p> <p>13 First of all, let's deal with the</p> <p>14 sequential moving furnace. Excuse me,</p> <p>15 with the furnace device. Did you or did</p> <p>16 you not say that that was technically</p> <p>17 impossible?</p> <p>18 A. I can't recall that I said those</p> <p>19 specific words.</p> <p>20 Q. Well, let's talk about the</p> <p>21 sequential device, sir. The sequential</p> <p>22 device, according to the conclusions from</p> <p>23 the Airbus meeting, looked more promising,</p> <p>24 didn't it?</p>

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1 A. That's what it said in February
2 of 1989.
3 Q. Is it true?
4 A. It was an early time in the
5 project.
6 Q. Is it true?
7 A. That's what the statement is on
8 a piece of paper.
9 Q. Is it true?
10 A. I think a combination or a
11 combination of technology would have to be
12 used.
13 Q. Is it true that a sequential
14 device looks more promising? Yes or no?
15 A. That's what the statement says
16 on the piece of paper.
17 Q. We read that. What I'm asking
18 you, sir, based upon what you knew at that
19 time, was it an accurate reflection of
20 what the research showed?
21 A. In February of 1989, perhaps it
22 did show that.
23 Q. And it also goes on to say,
24 however, RJR - and that's Reynolds,

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1 that's a competitive tobacco company;
2 correct?
3 A. Um-hum.
4 Q. -- has a U.S. patent which is
5 very broad in scope. Right?
6 A. Right.
7 Q. Which meant that there was a
8 problem in trying to make a sequential
9 device that would be marketable because it
10 would run afoul of U.S. patent law; would
11 it not?
12 A. That is your interpretation.
13 That is not mine.
14 Q. What's your interpretation?
15 A. I think any patent, once it's
16 established, provides a road map to
17 develop around the project - or patent.
18 It also says, back to the Airbus minutes,
19 after considerable debate it was resolved
20 that the terms of the reference of Nova
21 should be rewritten to ensure they embrace
22 the technology but not the product goals.
23 Q. And wasn't that - didn't that
24 happen?

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1 A. I can't tell from these minutes
2 what has happened.
3 Q. Well, you know you were there.
4 Didn't they institute project Nova?
5 A. Yes, they did.
6 Q. And didn't project Nova go ahead
7 after 1989?
8 A. Yes.
9 Q. So what they did, sir, was they
10 transferred the research, which was the
11 basic research that needed to be done to
12 try to make a prototype product, to
13 Southampton; isn't that what happened?
14 A. In a way, yes.
15 Q. Okay. They tried to do a
16 prototype product at B & W called project
17 Airbus. Correct?
18 A. So far correct.
19 Q. And that project started well
20 before you got there; correct?
21 A. I believe so.
22 Q. And that project ran into
23 technological problems; correct?
24 A. I guess what I would like to see

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1 before commenting on it is the latest
2 status report that may have been an
3 extension of these minutes to allow me to
4 bridge between what was happening in 1989
5 and what happened in February of 1989 and
6 September of 1989. You are asking me,
7 based on these sole two documents, to
8 reconstruct my memory.
9 Q. No, sir. I'm asking you, is it
10 not correct that it ran into technological
11 problems?
12 A. Every project that you ever do
13 runs into technological problems. That's
14 what R & D does, solves technological
15 problems. That is the function of an R. &
16 D group.
17 Q. Wasn't the problem that they ran
18 into, problems of basic research, the need
19 for basic research?
20 A. That is one of the problems, one
21 of, a myriad of problems.
22 Q. And therefore, wasn't it B & W's
23 recommendation - as a result of this
24 meeting, wasn't it their recommendation to

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<p>1 do basic research where that research 2 could be best performed, Southampton? 3 A. Which are we referring to, which 4 document are you referring to now? 5 Q. I'm referring to the conclusions 6 from the Airbus research meeting of 16th 7 February, 1989. 8 A. I assume there is other 9 activities documents that support 10 activities that are in between February of 11 '89 and September of '89; are there not? 12 This is an early meeting. There is a lot 13 of water went under the dam for that. 14 Q. Sir, sir, can you answer my 15 question? Wasn't it the conclusion of 16 this meeting that there needed to be basic 17 research done because the prototype work 18 highlighted the need for it? 19 A. It also highlighted the issue of 20 regulatory authority. I mean it 21 highlighted many issues. 22 THE COURT: Dr. Wigand, answer 23 his question, please. 24 A. That's what the document appears</p>	<p>1 Southampton. 2 A. Before September of 1989? 3 Q. Wasn't research ongoing at 4 Southampton? 5 A. There was research going on at 6 Southampton, and the project continued at 7 Brown & Williamson. 8 Q. What was the project's name? 9 A. At where? 10 Q. Brown & Williamson? 11 A. Airbus. 12 Q. Project Airbus was continued at 13 Brown & Williamson after this meeting? 14 A. Which meeting? 15 Q. After this meeting of February 16 16, 1989? 17 A. Yes. 18 Q. Most certainly. 19 Okay. Look at the next page. 20 Do you see where number nine is? 21 A. Um-hum. 22 Q. We are looking at exhibit 23 number -- we are looking at the 24 conclusions from the Airbus research</p>
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<p>1 to say. 2 Q. Okay. And you know nothing, 3 sir, that's contradictory to that, do you? 4 A. From these two documents in 5 front of me? 6 Q. From your work experience at 7 B & W? 8 A. From my work experience at B & W 9 that leads to what? 10 Q. Dr. Wigand, isn't that correct? 11 Isn't the document that you have in front 12 of you at number 4, paragraph 4 -- isn't 13 it correct that the research on Airbus has 14 not produced a prototype product; but it 15 has highlighted the need for basic work? 16 Isn't that correct at that time? 17 A. In February of 1989, that is 18 correct, and that may not have been 19 correct in May of 1989 or June of 1989. 20 Q. What happened, sir, after this 21 meeting? 22 A. Research continued at Brown & 23 Williamson. In 1989, research continued. 24 Q. Research continued, sir, at</p>	<p>1 meeting. Now, sir, does it not say in 2 view of these various factors it was 3 agreed to propose to TSRT. What is TSRT? 4 A. That is the Tobacco Strategy 5 Review Team. 6 Q. And what is the function of the 7 Tobacco Strategy Review Team? 8 A. What is the function of the 9 Tobacco -- it's the number ones from the 10 CAC companies who review the overall 11 businesses. 12 Q. They are the ones who agree on 13 what projects are going to be done where; 14 isn't that true? 15 A. So to speak, yes. 16 Q. Okay. In view of these various 17 factors, it was agreed to propose to TSRT 18 that the Airbus project be terminated from 19 31st of March and that the basic research 20 issues at a level of approximately one 21 million dollars be transferred to 22 Southampton. Do you see that? 23 A. I see that. 24 Q. The Airbus project manager will</p>

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<p>1 set the guidelines for this research.</p> <p>2 A. I see that.</p> <p>3 Q. And who was that, the Airbus</p> <p>4 project manager?</p> <p>5 A. I think it was Bob Denier and</p> <p>6 Bill Deines and Kelly St. Charles. I</p> <p>7 think there were a number of people.</p> <p>8 Q. Wasn't Bill Deines the person</p> <p>9 who drafted the guidelines for research</p> <p>10 for Airbus for Southampton to follow?</p> <p>11 A. Was this action actually</p> <p>12 terminated on the 31st of March?</p> <p>13 MR. SHEFFLER: Let's mark this,</p> <p>14 please.</p> <p>15 -----</p> <p>16 Thereupon, Wigand Exhibit No. 24</p> <p>17 was marked for purposes of</p> <p>18 identification.</p> <p>19 -----</p> <p>20 Q. I show you, sir, a document</p> <p>21 that we have labeled as Deposition Exhibit</p> <p>22 Wigand 24. Do you see the very first</p> <p>23 page, sir? It's a facsimile, a copy of a</p> <p>24 facsimile dated March 23rd, 1989. Do you</p>	<p>1 Q. Is he a scientist?</p> <p>2 A. He was a manager.</p> <p>3 Q. Is he a scientist?</p> <p>4 A. You characterized me yesterday</p> <p>5 as not being a scientist, haven't you?</p> <p>6 Q. I never said you were not a</p> <p>7 scientist, sir. Can you answer my</p> <p>8 question? Is Alan Heard a scientist?</p> <p>9 A. He has technical training. He</p> <p>10 was a manager. He was overall coordinator</p> <p>11 for group research.</p> <p>12 Q. Is he a scientist?</p> <p>13 A. He had scientific training.</p> <p>14 Q. ALH summarized the progress of</p> <p>15 project Airbus at B & W; do you see that?</p> <p>16 A. Yes.</p> <p>17 Q. The work has not produced</p> <p>18 viable -- do you know what "viable" means?</p> <p>19 A. Yes.</p> <p>20 Q. What does it mean?</p> <p>21 A. Livable, workable.</p> <p>22 Q. Workable prototype designs and</p> <p>23 has highlighted the need for basic</p> <p>24 research to guide prototype development.</p>
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<p>1 see that?</p> <p>2 A. Uh-huh.</p> <p>3 Q. Are you one of the recipients?</p> <p>4 A. Yes, I am.</p> <p>5 Q. Does it say here, enclosed are</p> <p>6 summary notes of research review held on</p> <p>7 the 9th and 10th March, 1989?</p> <p>8 A. Yes.</p> <p>9 Q. And it's from Richard Baker,</p> <p>10 correct?</p> <p>11 A. Yes, it is.</p> <p>12 Q. Now, sir, it has enclosed</p> <p>13 research review summary notes of a meeting</p> <p>14 that was held on March 10th, the 9th and</p> <p>15 10th; is that correct?</p> <p>16 A. Yes.</p> <p>17 Q. Were you at that meeting?</p> <p>18 A. Yes, I was.</p> <p>19 Q. Okay. Do you see where it says,</p> <p>20 one, project Airbus?</p> <p>21 A. Yes.</p> <p>22 Q. Do you see where it says ALH?</p> <p>23 Who is ALH?</p> <p>24 A. I believe it's Alan Heard.</p>	<p>1 Do you see that?</p> <p>2 A. Um-hum.</p> <p>3 Q. When Airbus was -- skipping down</p> <p>4 to the next paragraph.</p> <p>5 A. Why don't we stay with it. It</p> <p>6 appears --</p> <p>7 Q. It appears that an Ellis type of</p> <p>8 alternative product design is not viable.</p> <p>9 A. Uh-huh. And?</p> <p>10 Q. And a sequential device is more</p> <p>11 attractive?</p> <p>12 A. Uh-huh.</p> <p>13 Q. However, R. J. Reynolds have a</p> <p>14 broad patent coverage on sequential</p> <p>15 designs. Isn't that we just found in the</p> <p>16 conclusions of the February 16th, 1989</p> <p>17 meeting?</p> <p>18 A. I think you have some of them,</p> <p>19 yes.</p> <p>20 Q. Okay. What does it say after</p> <p>21 reviewing B & W had decided, subject to</p> <p>22 agreement by the TSRT to, one, point one,</p> <p>23 terminate work on Airbus in Louisville</p> <p>24 from 31st, March, 1989. It says that,</p>

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1 doesn't it?

2 A. Uh-huh.

3 Q. Two, transfer basic research to

4 Southampton at a level of around one

5 million dollars in the first year.

6 A. Um-hum.

7 Q. So B & W was going to transfer

8 the research, the basic research which was

9 needed to develop the prototypes, to

10 develop and circumvent this technological

11 problem and were going to fund it at a

12 million dollars a year in Southampton; is

13 that correct?

14 A. Uh-hum.

15 Q. B & W would define the broad

16 outline of the research program; is that

17 correct?

18 A. That's what it says.

19 Q. Is that what happened, sir?

20 A. Based on your notes, it appears

21 that's what's happened.

22 Q. Okay. So let's sum up here for

23 a minute. You said that Airbus was

24 canceled by B & W management because of

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1 litigation concerns after the Vancouver

2 meeting of 1989. That's false, isn't it?

3 A. I don't believe so.

4 Q. It was canceled in part in March

5 of 1989 well before the Vancouver meeting

6 ever occurred, wasn't it?

7 A. That's your conclusion.

8 Q. Well, isn't that the conclusion

9 of the documents? Isn't that what

10 happened?

11 MR. ALDOCK: I believe the prior

12 testimony, counsel, was that it was sent

13 offshore. You keep saying canceled.

14 MR. SHEFFLER: The prior

15 testimony is what it is. And I don't

16 think I misrepresented anything. Mr.

17 Wigand has testified that Airbus was one

18 of the safer projects that B & W

19 management canceled after Vancouver. And

20 that's why I'm asking the question.

21 Q. That didn't happen, did it? It

22 wasn't canceled after Vancouver, was it?

23 A. What wasn't canceled after

24 Vancouver?

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1 Q. Airbus.

2 A. Airbus type research was reduced

3 and canceled, it was canceled.

4 Q. It was stopped at B & W in March

5 of 1989 and continued at Southampton?

6 A. No. It continued on at B & W

7 after March 31st.

8 Q. Sir, the basic prototype work

9 that B & W was doing was halted 31st,

10 March, 1989; is that correct?

11 A. That's what the memo suggests.

12 Q. And there is no basis to claim

13 that that was halted because of litigation

14 concerns, is there?

15 A. There was no basis that work in

16 a safer cigarette was canceled based on --

17 Q. There is no basis for you to say

18 that project Airbus was canceled for

19 litigative concerns, was there?

20 A. Yes, there is a basis.

21 Q. Sir, it was stopped for

22 technological reasons; isn't that true?

23 A. No, it wasn't. It was not.

24 Let's go back to the original documents.

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1 It was stopped for a number of reasons.

2 Q. One of which was technological

3 reasons. That's what you claimed in the

4 Vancouver minutes.

5 A. One is increasing -- why did

6 they report it at the Vancouver meeting on

7 Airbus if it was on stopped March 31 at B

8 & W?

9 Q. What did you report? You

10 reported it was terminated, that's what

11 you reported. You reported it was

12 terminated.

13 A. Wigand briefly -- J.W. briefly

14 described the problems associated with

15 project Airbus during the one-year period.

16 Q. Go on.

17 A. And it is confirmed that the

18 need for basic research had been

19 highlighted.

20 Q. And that's what we found in the

21 documents?

22 A. This is now undertaken at

23 Southampton as project Nova, not project

24 Airbus.

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1 Q. Right. What happened to project
2 Airbus? Read the next sentence.
3 A. Project Airbus itself had been
4 terminated.
5 Q. Exactly, you said it was
6 terminated. How can you get on CBS 60
7 Minutes and tell Mike Wallace that this
8 project was canceled after Vancouver
9 because of litigative concerns when you
10 yourself know it was canceled back in
11 March because of technological concerns?
12 MR. ALDOCK: Your Honor, this is
13 a small room. I don't think there is had
14 a need to slam your hand on the table or
15 to raise your voice. This is -- this if
16 for a deposition. This isn't for any
17 other purpose.
18 THE WITNESS: I think it's a
19 good time to take a break.
20 MR. WALLACE: There is a
21 question pending, there is a question on
22 the floor.
23 MR. SHEFFLER: You answer the
24 question first and then you can take a

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1 A. Is it my testimony that Airbus
2 was not canceled?
3 Q. At the beginning of today, you
4 told us there were certain safer cigarette
5 projects. You mentioned Airbus, you said
6 biological activity, and you said testing.
7 THE COURT: Are you not
8 changing? It's Vancouver in September,
9 not November.
10 MR. SHEFFLER: I'm sorry,
11 September. I apologize.
12 Q. Sir, did you not testify earlier
13 this morning that there were safer
14 cigarette projects? Although you told
15 Mike Wallace it was a project. But now
16 you have expanded it to include not only
17 Airbus, biological testing and additives?
18 Now, sir, we have explored the
19 first one, haven't we, Airbus, which you
20 said was the primary one; did you not?
21 A. I never said anything to Mr.
22 Wallace about Airbus, did I?
23 Q. No. You didn't define for Mr.
24 Wallace what the project was. That's why

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1 break.
2 THE COURT: We will not take a
3 break until you answer the question,
4 Dr. Wigand.
5 THE WITNESS: Where did I say
6 that specifically that Airbus was canceled
7 in the Mike Wallace interview?
8 Q. I asked you at the beginning of
9 the day, sir, what were the safer projects
10 that were canceled after, after the
11 Vancouver meeting. You testified one of
12 them, the primary one, was Airbus. That
13 is your testimony, sir. If you want to
14 retract it now, you can.
15 MR. ALDOCK: That is his
16 testimony, but that is not the question
17 pending which has to do with what he told
18 Mike Wallace.
19 A. And I want to see the specific
20 words that I told Mike Wallace that that
21 was what happened.
22 Q. Okay, sir. Is it your testimony
23 that Airbus was not canceled after
24 November?

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1 we did that earlier this morning. You
2 told us that the project that was
3 canceled -- and you told Mr. Wallace there
4 was a safe cigarette project canceled,
5 right, didn't you tell him that?
6 A. I believe so.
7 Q. Didn't you tell him that that
8 was canceled after substantial work?
9 A. I believe I said that, yes.
10 Q. And didn't you tell him it was
11 canceled after the Vancouver meeting?
12 A. I believe I said that.
13 Q. Didn't you tell him it was
14 canceled because B & W management had
15 litigative concerns?
16 A. That's true.
17 Q. Isn't it false that Airbus was
18 canceled after the Vancouver meeting?
19 A. No, it was not canceled after
20 the Vancouver meeting.
21 Q. So it would be false for anyone
22 to say that Airbus was canceled after
23 Vancouver.
24 MR. ALDOCK: You are doing

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<p>1 double negatives. Let him answer the 2 question. 3 THE COURT: I think the question 4 on the floor was, is it still your 5 testimony, after reviewing these notes, 6 that Airbus was canceled after the 7 Vancouver meeting in September of 1989. 8 THE WITNESS: Efforts on a 9 safer cigarette were canceled. 10 MR. SHEFFLER: That's not my 11 question, sir. 12 THE COURT: The question is 13 directed to Airbus, Airbus specifically. 14 Is it still your testimony this morning, 15 he is asking you, after reviewing these 16 minutes and various things, that Airbus 17 was canceled after, subsequent to, 18 following, the Vancouver meeting of 1989. 19 THE WITNESS: I believe all work 20 at Brown & Williamson was terminated after 21 the Vancouver meeting and all had been 22 transferred to Southampton as well as 23 B.A.T.C.F. 24 Q. Sir, that is contradicted by the</p>	<p>1 Q. You did edit the minutes, didn't 2 you? 3 A. I edited part of the minutes. 4 Q. And the part of the minutes you 5 edited dealt with Airbus? 6 A. Yeah, and what did I edit? 7 Q. Well, we'll show you. 8 A. Why don't we -- before we get 9 into the next issue why don't we let me 10 take a break? 11 Q. I would rather continue if we 12 could. 13 MR. MILLDMAN: It's the same 14 issue. 15 THE COURT: Okay. 16 THE VIDEOGRAPHER: Going off the 17 record. The time is approximately 1015 18 a.m. 19 (Recess taken.) 20 THE VIDEOGRAPHER: Back on the 21 record. The time is approximately 1028 22 a.m. 23 BY MR. SHEFFLER: 24 Q. Mr. Wigand, during the break,</p>
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<p>1 minutes that you have seen here today; is 2 it not? 3 A. I haven't seen all the minutes. 4 I have seen part of the minutes. 5 Q. Do you have anything that you 6 can say to explain why you told the people 7 at Vancouver that it was terminated 8 because it was technologically impossible? 9 A. I only have the minutes there, I 10 don't have all the information here. 11 Q. But it's the minutes of your 12 speech to them. 13 A. Is it the minutes -- it is not 14 the minutes of my speech. 15 Q. J.W.? 16 A. It is somebody else paraphrasing 17 what I said. 18 Q. So they wrote it wrong? 19 A. And I would have edited it and 20 adapted the minutes to reflect my 21 conversations. 22 Q. You would have edited and 23 reflected your conversations? 24 A. Yes.</p>	<p>1 did you discuss any of the testimony this 2 morning with counsel? 3 A. Did I discuss any of the 4 testimony? Yes. 5 Q. Did you discuss it with anyone 6 else? 7 A. No, I did not. 8 Q. What did counsel and you discuss 9 with respect to the testimony? 10 MR. ALDOCK: Objection. 11 THE COURT: Sustained. 12 ----- 13 Thereupon, Wigand Exhibit No. 25 14 was marked for purposes of 15 identification. 16 ----- 17 Q. Sir, you said you wanted to see 18 your edits to the Vancouver minutes at the 19 Airbus section. We have marked those, sir, 20 as Exhibit Wigand 25, and I would show that 21 to you right now. First of all, sir, if you 22 would turn with me to the section entitled 23 Airbus; do you see it there? 24 A. Can I just look at the whole</p>

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<p>1 document?</p> <p>2 Q. Well, sir, I'm going to only ask</p> <p>3 you questions at this time about the Airbus,</p> <p>4 which is what we are talking about. So if</p> <p>5 you would look at, please, at the page where</p> <p>6 Airbus is discussed.</p> <p>7 MR. ALDOCK: Now, you are clear,</p> <p>8 counsel, when you say "your edits," you</p> <p>9 understand that most of the editing on that</p> <p>10 was Mr. Wells'. That's his handwriting, and</p> <p>11 that's his testimony.</p> <p>12 MR. SHEFFLER: Excuse me, sir,</p> <p>13 but I don't think that's been established</p> <p>14 and I'm not sure that's clear at all.</p> <p>15 Q. Could you please, sir, look at the</p> <p>16 Airbus section which we are referring to?</p> <p>17 Do you see at the Airbus section of this</p> <p>18 exhibit, which is the original draft minutes</p> <p>19 with editing marks on it, marginalities. Do</p> <p>20 you see that?</p> <p>21 A. My editing and Mr. Wells'</p> <p>22 editing.</p> <p>23 Q. On the Airbus section, sir, is</p> <p>24 the handwriting there yours?</p>	<p>1 A. Was that changed by me?</p> <p>2 Q. That's my question.</p> <p>3 A. Changed in the final minutes or in</p> <p>4 this iteration?</p> <p>5 Q. Can you answer my question,</p> <p>6 sir? Was the sentence, "The project --</p> <p>7 A. In this specific document, I have</p> <p>8 not changed that language.</p> <p>9 Q. Okay.</p> <p>10 A. In this specific document.</p> <p>11 Q. Did you edit another document?</p> <p>12 A. I don't know. I can't recall</p> <p>13 that.</p> <p>14 Q. You don't know if you have</p> <p>15 edited these minutes yourself later?</p> <p>16 A. I don't believe I edited them</p> <p>17 any further.</p> <p>18 Q. Okay. But in the edits you made</p> <p>19 in this document, sir, the minutes to the</p> <p>20 Vancouver meeting held on September 18th to</p> <p>21 22, you did not edit, you did not change,</p> <p>22 you did not make any modification to the</p> <p>23 sentence, "The project Airbus itself had</p> <p>24 been terminated because it was</p>
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<p>1 A. Some of the handwriting is mine,</p> <p>2 some of the notations in the margin are</p> <p>3 not mine.</p> <p>4 Q. Okay. But the handwriting is</p> <p>5 yours, sir?</p> <p>6 A. I believe the handwriting there</p> <p>7 is mine.</p> <p>8 Q. Okay. Now the sentence that you</p> <p>9 said, that you may or may not have said at</p> <p>10 Vancouver in 1989, is that project Airbus</p> <p>11 itself had been terminated because it was</p> <p>12 technologically impossible to construct</p> <p>13 acceptable moving furnace devices. Do you</p> <p>14 see that sentence there, sir?</p> <p>15 A. I have to read the whole</p> <p>16 paragraph. Hold on a minute.</p> <p>17 Q. It's the same place it was in</p> <p>18 the original.</p> <p>19 A. Okay. I see that, yes.</p> <p>20 Q. Now, sir, was the sentence, "The</p> <p>21 project Airbus itself had been terminated</p> <p>22 because it was technologically impossible</p> <p>23 to construct acceptable moving furnace</p> <p>24 devices," changed by you?</p>	<p>1 technologically impossible to construct</p> <p>2 acceptable moving furnace devices," did you?</p> <p>3 A. I did not change that, no, I did</p> <p>4 not.</p> <p>5 Q. And that is because that, in</p> <p>6 fact, was correct?</p> <p>7 A. It also says that after</p> <p>8 considerable debate, it was resolved that</p> <p>9 the terms of reference of Nova should be</p> <p>10 rewritten to be sure that they embrace the</p> <p>11 technology but not product goals, product</p> <p>12 prototype goals.</p> <p>13 Q. And that was your edit,</p> <p>14 prototype going to product, correct?</p> <p>15 A. That is correct.</p> <p>16 Q. And, in fact, that happened, did</p> <p>17 it not?</p> <p>18 A. The whole reason why Airbus was</p> <p>19 shipped overseas was, one, it needed more</p> <p>20 research, but also Airbus was shipped</p> <p>21 overseas for litigative issues. They did</p> <p>22 not have anything discoverable in the United</p> <p>23 States on a safer cigarette.</p> <p>24 Q. Sir, did not Brown & Williamson</p>

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<p>1 continue to collaborate on research on the 2 basic fundamental needs to make an 3 acceptable moving furnace device cigarette? 4 A. As well as other approaches. 5 Q. They continued to collaborate on 6 it, didn't they? 7 A. It was terminated or transferred 8 from the United States to U.K. 9 Q. Because the U.K. was in a position 10 to do the basic research, wasn't it? 11 A. No. Well, that's part of it. 12 Part of it also was for litigative purposes, 13 not to have a document in the United States 14 that would reflect safer cigarette research. 15 Q. If that's true, why do they have 16 the documents in the United States 17 reflecting the Nova research? 18 A. Which documents? 19 Q. All of the FRC and preceding 20 group research and development on Nova. 21 A. Which documents are you 22 referring to? Where are the final 23 minutes? I would like to see what made it 24 into the final minutes.</p>	<p>1 shouldn't be in the room. They aren't 2 participating. 3 MR. MILLIMAN: We are not on the 4 video. 5 MR. ALDOCK: The sounds come 6 through. 7 MR. MILLIMAN: The sound does 8 not come through. We are not making any 9 sounds, Mr. Aldock. 10 MR. ALDOCK: I heard you. The 11 Judge heard you. 12 MR. MILLIMAN: Sometimes the 13 testimony is quite astounding. 14 THE COURT: That's enough 15 comments. Let's get on with the 16 questions. 17 Q. Project Nova did continue after 18 Vancouver; did it not? 19 A. I believe project Nova continued 20 after Vancouver. 21 Q. And that was the basic research 22 that was needed to develop before research 23 could be done on the prototype 24 product, such as Airbus?</p>
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<p>1 Q. I know you do, sir, but we are 2 going to focus on Airbus right not. 3 That's my question and that's what we're 4 going to focus on. 5 A. I would like to see what my 6 comments on Airbus were in the final 7 minutes. 8 Q. Sir, you didn't change, in your 9 edits to this version, the sentence that it 10 was technologically impossible and therefore 11 terminated. You didn't change that. 12 A. These were draft minutes. 13 Q. And you had your chance to edit it 14 and correct it if you thought that needed to 15 be corrected, and you didn't change it. 16 A. Well, guess what, I was told I 17 couldn't change it, that the lawyers were 18 going to change it, and they did change it. 19 Q. I see. You were told, okay. 20 Another claim. 21 MR. ALDOCK: Your Honor, we have 22 got a video deposition. We have a lot of 23 guests that don't participate. If they are 24 going to laugh, snicker, play games, they</p>	<p>1 A. I think project Nova, based on 2 these minutes, was directed towards 3 different product goals. 4 Q. Sir, is it not true that project 5 Nova was instituted in part to develop the 6 technological foundation for the 7 development of alternative cigarette-like 8 product such as Airbus? 9 A. That sounds familiar, but I would 10 have to look at the document. 11 Q. Is it true, sir? 12 A. It sounds familiar. 13 Q. Well, is it -- 14 A. I can't tell if it's true unless 15 I see the document you are referring to. 16 Q. Isn't it true, sir, that Brown & 17 Williamson routinely got information about 18 Nova research being done at the FRC at 19 Brown & Williamson, kept the documents at 20 Brown & Williamson, did not purge the 21 documents at Brown & Williamson, did not 22 stop the research; isn't that true? 23 A. Yeah, but purging is purging the 24 words "safer cigarette." That's what we</p>

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<p style="text-align: right;">Page 402</p> <p>1 are talking about here, purging the use of 2 the words "safer cigarette." 3 Q. Didn't you say that every time 4 there was a reference to a safer cigarette, 5 the document was purged from R & D files? 6 A. I didn't say every time, did I? 7 I said most of the time, did I not? 8 Q. What did you say to 60 Minutes, 9 sir? Do we have that exhibit there? 10 MR. ALDOCK: Page and line, 11 please. 12 MR. WALLACE: I will get it for 13 you, Mr. Aldock. 14 BY MR. SHEFFLER: 15 Q. I think it's page five and I think 16 it's about halfway down the page. Where 17 they said, "And then they purged documents 18 every time there was a reference to a word 19 less hazardous or safer," do you see that 20 sir? 21 A. Yes, I do. 22 Q. Is that your statement, sir? 23 A. Yes, I do. 24 Q. And was that your statement on</p>	<p style="text-align: right;">Page 40</p> <p>1 happened, right? 2 MR. ALDOCK: I object to how 3 else we could prove it. 4 THE COURT: Sustained. 5 Q. Sir, do you have any doubt that 6 the project Nova was a scientific and 7 technological foundation for the 8 development of alternative cigarette-like 9 products? Do you have any doubt of that? 10 A. It's generally what I understand, 11 but I would have to look at the document. 12 Q. Do you have any doubt that that 13 continued throughout 1989, well after 14 Vancouver? 15 A. I can tell you after the Vancouver 16 minutes there was a great awareness relative 17 to the use of the words safer and less 18 hazardous in terms of a cigarette. And it 19 was purged from all documents that I was 20 aware of. 21 Q. Can you tell -- 22 A. And the words were not used 23 anymore. 24 Q. Okay. Now, you have told us</p>
<p style="text-align: right;">Page 403</p> <p>1 60 Minutes on a national broadcast? 2 A. And then they purged. And that 3 says that they purged after every time 4 there is a reference to the words less 5 hazardous or safer. 6 Q. Okay. 7 A. Do you have any documents after 8 this that suggested those words were in any 9 documents? 10 Q. Well, sir, does that mean they 11 purged them, because they don't exist? 12 A. I would imagine so. They purged 13 a lot of documents. 14 Q. Did they purge the documents in 15 Nova, sir? 16 A. Pardon me? 17 Q. Did they purge the documents in 18 Nova? 19 A. No, they purged words that used 20 and explained the use of the words safer 21 cigarette and less hazardous. Those words 22 were purged. 23 Q. And the only way we can prove 24 that, sir, is by your claim that that</p>	<p style="text-align: right;">Page 40</p> <p>1 about the Vancouver minutes themselves. 2 And, of course, those documents exist. We 3 have made them an exhibit. They came from 4 R & D files. 5 A. Did they come from R & D files, 6 the minutes? 7 Q. And they were produced in 8 litigation. You told us that yesterday, 9 that you knew that. 10 A. That I believe they came from our 11 files out of R & D? 12 Q. They came from R & D files; did 13 they not, sir? 14 A. Well, this is Kendrick Wells' 15 file right here. 16 Q. Okay. That is your -- one that 17 you also made edits on? 18 A. Was it in my file? 19 Q. Sir, it was in R & D files. 20 A. Which file was it found in? 21 Q. The original minutes were in R & D 22 files, so that wasn't purged? 23 A. Not in my files it wasn't. I 24 had to return these minutes.</p>

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<p>1 Q. All right. Let me ask you a 2 different question. The original minutes 3 are there, correct? You have them. 4 A. The original draft of the 5 minutes are here, that's correct. 6 Q. And you could not find the words 7 "safer cigarette" in those minutes? 8 A. I can find lots of euphemisms 9 that allude, allude to safer cigarettes. 10 Q. Mr. Wigand, please, we have to 11 proceed somewhat by question and answer. 12 You cannot find the words "safer 13 cigarette" in that, can you? 14 A. I can see lots of references to 15 the words -- 16 THE COURT: Dr. Wigand, yes or 17 no. Can you find it in there or not? 18 THE WITNESS: Then I will have 19 to read the document again, sir. 20 THE COURT: All right. 21 Q. Can I withdraw the question, 22 your Honor -- 23 THE COURT: Go right ahead. 24 MR. SHEFFLER: -- because we</p>	<p>1 at the Vancouver minutes to see if it was 2 in there. Now you want to see the 3 documents to see if the words were in 4 there and purged. How did you make this 5 statement to Mike Wallace at this time? 6 A. Is this every document or one 7 document? 8 Q. Can you name a document, sir, 9 other than that? Tell me a document where 10 the words "less hazardous" or "safer" were 11 purged. Name one document and name the 12 author. Name anything about it. Just 13 describe it. Tell us the document, sir. 14 A. Documents that I authored on 15 research and development plans in which the 16 words safer and less hazardous were used in 17 terms of R & D operating plans. 18 Q. R & D operating -- 19 A. It was edited by the legal 20 department. 21 Q. R & D operating plans? 22 A. Yes. 23 Q. You authored them? 24 A. Yes.</p>
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<p>1 are somewhat pressed for time. But I will 2 after -- Maybe, Dr. Wigand, if you would 3 like to look at the document over lunch 4 and find the reference to less hazardous 5 or safer in it, we can discuss it after 6 lunch. 7 MR. ALDOCK: We will have no 8 assignments over lunch from counsel. 9 Q. Okay. Let me ask you this, sir, 10 didn't you say on 60 Minutes that they 11 purged documents every time there was a 12 reference to a word less hazardous or 13 safer? 14 A. I said then. 15 MR. ALDOCK: Documents or the 16 words? 17 Q. And then they purged documents 18 every time there was a reference to a word 19 less hazardous or safer. Didn't you say 20 that? 21 A. And then they purged documents 22 every time there was a reference to the word 23 less hazardous or safer. 24 Q. Okay. Sir, now you need to look</p>	<p>1 MR. SHEFFLER: Can we mark this 2 as the next exhibit, please? 3 ----- 4 Thereupon, Wigand Exhibit No. 26 5 was marked for purposes of 6 identification. 7 ----- 8 Q. Let me show you, sir, Wigand 26. 9 Now, sir -- 10 A. This is not the document I am 11 referring to. I'm referring to -- 12 Q. Just a minute, sir, let me ask 13 the question. Is this not the document 14 entitled February Product Development 15 Operating Plans Status Report? 16 A. Of February 1989. 17 Q. Yes, that's what I said. 18 February Product Development Operating 19 Plans Status Report. 20 A. Um-hum. 21 Q. Now, is there any edits to this 22 document? 23 A. It's not after the meeting, is 24 it?</p>

<p style="text-align: right;">Page 410</p> <p>1 Q. Okay.</p> <p>2 A. Is it after September, 1989?</p> <p>3 Q. Is there any edits to the</p> <p>4 document?</p> <p>5 A. This document? Is there any</p> <p>6 reference to it? I don't know what was</p> <p>7 edited in this document.</p> <p>8 Q. This is an operating plan,</p> <p>9 right?</p> <p>10 A. This is not --</p> <p>11 MR. ALDOCK: It was also before</p> <p>12 the meeting, counsel, you know that.</p> <p>13 Q. Sir, if it was before the meeting</p> <p>14 and it had words of safer or less hazardous,</p> <p>15 they should have been edited out according</p> <p>16 to you, correct?</p> <p>17 A. After September of 1989.</p> <p>18 Q. Then they should have been</p> <p>19 edited out; correct?</p> <p>20 A. Well, I'm sure, if they were</p> <p>21 purged and edited, you wouldn't find them,</p> <p>22 would you?</p> <p>23 Q. Well, where is there any edits</p> <p>24 in this document?</p>	<p style="text-align: right;">Page 411</p> <p>1 thing we need to clear that up. Are you</p> <p>2 saying they were purged only from</p> <p>3 September on forward or they went back and</p> <p>4 purged everything that was in their</p> <p>5 records in the past?</p> <p>6 THE WITNESS: I believe what I mean</p> <p>7 here or meant that every time there was a</p> <p>8 reference to the words less hazardous and</p> <p>9 safer, they purged it from documents from</p> <p>10 then on.</p> <p>11 THE COURT: From the Vancouver</p> <p>12 meeting on, not in the past?</p> <p>13 THE WITNESS: Yes.</p> <p>14 BY MR. SHEFFLER:</p> <p>15 Q. Sir, there were no references to</p> <p>16 less hazardous or safer, were there?</p> <p>17 A. Yes, there was.</p> <p>18 Q. You didn't draft the operating</p> <p>19 plans, did you?</p> <p>20 A. I had -- I didn't?</p> <p>21 Q. Who drafted the operating plans</p> <p>22 in February?</p> <p>23 A. I have absolutely no idea who</p> <p>24 drafted it.</p>
<p style="text-align: right;">Page 411</p> <p>1 A. This is a final document. I</p> <p>2 don't know where it's been edited. I</p> <p>3 don't see the paper trail leading up to</p> <p>4 this document.</p> <p>5 Q. Excuse me, sir. You said to us</p> <p>6 that after the Vancouver meeting and then</p> <p>7 they purged every -- documents and every</p> <p>8 time there was a reference to less</p> <p>9 hazardous or safer. And then I asked you</p> <p>10 what documents. And then you said</p> <p>11 operating plans, status reports.</p> <p>12 A. 1989, the operating plan for 1990.</p> <p>13 Where is it? Can I please see that?</p> <p>14 Q. Operating plan for 1990, let's</p> <p>15 get it.</p> <p>16 A. This is February 1989.</p> <p>17 Q. But, sir, this was in the files</p> <p>18 and if you were correct that every time</p> <p>19 the words less hazardous or safer were</p> <p>20 used were purged, it should have been</p> <p>21 purged here, right.</p> <p>22 MR. ALDOCK: He didn't say</p> <p>23 purged retroactively.</p> <p>24 THE COURT: Well, that's one</p>	<p style="text-align: right;">Page 411</p> <p>1 Q. So it wasn't you?</p> <p>2 A. It looks like it's from a</p> <p>3 secretary.</p> <p>4 Q. It wasn't you, was it, sir?</p> <p>5 A. It looks like a secretary</p> <p>6 drafting operating plans.</p> <p>7 Q. It wasn't you, was it, sir?</p> <p>8 A. In February of 1989, it was not</p> <p>9 me.</p> <p>10 Q. When did you draft the operating</p> <p>11 plans?</p> <p>12 A. September, October, November,</p> <p>13 December of 1989 for 1990.</p> <p>14 Q. 1990.</p> <p>15 MR. SHEFFLER: Let's mark this</p> <p>16 next one.</p> <p>17 -----</p> <p>18 Thereupon, Wigand Exhibit No. 27</p> <p>19 was marked for purposes of</p> <p>20 identification.</p> <p>21 -----</p> <p>22 THE WITNESS: I don't think I</p> <p>23 was even --</p> <p>24 Q. Wait a minute.</p>

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<p>1 A. Can I go back on this? I mean, 2 I'm not even copied on this document. 3 Q. Okay. Sir, look at the next 4 document. Exhibit 27. These are 5 operating plans, aren't they? And they 6 are operating plans for 1990; are they 7 not? 8 A. Are those the final documents? 9 Q. It says, "Attached are copies of 10 1990 R & D operating plans," correct? 11 A. Um-hum. 12 Q. And these are operating plans, 13 correct? 14 A. Um-hum. 15 Q. These are for 1990; correct? 16 A. September 8th, 1989. 17 Q. And what are they for? 1990, 18 correct? 19 A. Yes. 20 Q. Where in here, sir, is the words 21 less hazardous or safer cigarette, and where 22 is there any edits? 23 A. I would imagine, if it's not there 24 now, it's been edited out.</p>	<p>1 MR. ALDOCK: Objection. It was 2 not his testimony. His testimony was it was 3 purged, but that doesn't mean it was purged 4 from a document or crossed out. They didn't 5 use it. They stopped using the term. They 6 edited it out before they wrote it. 7 THE COURT: Let's let the 8 witness explain what he means. 9 MR. SHEFFLER: Mr. Aldock, you do 10 a better job of testifying than he does, but 11 let me ask this question. 12 Q. Is it not correct, sir, that the 13 term less hazardous or safer cigarette was 14 simply never used in these documents? It 15 wasn't purged because it didn't exist? 16 A. In this document? 17 Q. In any of the documents of 18 R & D. 19 A. No, That is not true. 20 Q. Name the document. You told us 21 research -- you told us operating plans. 22 I have given you two sets of operating 23 plans. 24 A. Can I have all the operating</p>
<p>1 Q. Sir, show me -- you have a copy 2 of the document. Show me where there is 3 any edits made to it. 4 A. I don't see it. This was done on 5 September 8th, 1989 before the Vancouver 6 meeting. 7 Q. Where is there any reference in 8 there to less hazardous or safer? 9 A. I would have to review the minutes 10 or the plans. I mean, this is not an 11 operating plan. This is part of an 12 operating plan. These are the action plans. 13 There is a whole documentation that goes 14 with this in a written verbal -- this is 15 nothing but a distillation down. This is 16 part of an operating plan. 17 Q. Sir -- 18 A. It is not a complete operating 19 plan. 20 Q. Okay, sir. Is it your testimony 21 that in the operating plan for 1990 there 22 were references to less hazardous or safer 23 cigarettes? 24 A. That were deleted out, yes</p>	<p>1 plans for 1990? 2 Q. All the operating plans for 3 1990? 4 A. Yes. All the documents. This 5 is nothing but a distillation of the 6 operating plan and an action plan. That 7 tells who is going to do what. Where is the 8 narrative that goes with this? 9 MR. ALDOCK: They also both 10 predate the meeting. 11 Q. All right, sir. If I were to show 12 you the operating plans for 1990 and the 13 words safer cigarette and less hazardous 14 were not there, would you concede that those 15 terms were not used? 16 A. No. 17 Q. Is there anything, sir, that you 18 can point to to say less hazardous or 19 safer cigarette words were used and 20 subsequently purged from a document? 21 A. I can tell you it was the 22 practice of the lawyers to edit documents. 23 And they edited them out and they 24 destroyed the documents.</p>

<p style="text-align: right;">Page 418</p> <p>1 Q Can you name -</p> <p>2 A It was a -- it was a litigative</p> <p>3 concern to use the word less hazardous,</p> <p>4 safer. It was in many documents I wrote.</p> <p>5 Q Can you name one of those</p> <p>6 documents for us?</p> <p>7 A Can I name?</p> <p>8 Q Yes.</p> <p>9 A Research operating plans, internal</p> <p>10 research discussions -</p> <p>11 Q We have copies of -</p> <p>12 MR. ALDOCK: Objection. We have</p> <p>13 two copies of the ones that preceded the</p> <p>14 meeting and they are incomplete. We have</p> <p>15 had no document discovery so we don't have</p> <p>16 them because we were precluded by the</p> <p>17 court from taking document discovery in</p> <p>18 this case.</p> <p>19 Q You told us about the operating</p> <p>20 plans. Can you name a document that you</p> <p>21 authored that had safer cigarette research</p> <p>22 in it?</p> <p>23 A Final edition?</p> <p>24 Q Safer cigarette research. The</p>	<p style="text-align: right;">Page 42</p> <p>1 Q Clifty Falls minutes.</p> <p>2 A There were substantial</p> <p>3 conversations with the scientists on safer</p> <p>4 cigarettes, less hazardous, biological</p> <p>5 research.</p> <p>6 Q What is the Clifty Falls minutes</p> <p>7 of?</p> <p>8 A Research and development</p> <p>9 strategy review meeting held in Clifty</p> <p>10 Falls, Indiana.</p> <p>11 Q When was that?</p> <p>12 A I believe in 1990.</p> <p>13 Q Okay. Who attended?</p> <p>14 A Who attended?</p> <p>15 Q Yes.</p> <p>16 A Most of the R & D staff.</p> <p>17 Q Was David Gordon there?</p> <p>18 A Was David Gordon there? He may</p> <p>19 have been there.</p> <p>20 Q Who wrote the minutes?</p> <p>21 A I'm not quite sure who wrote the</p> <p>22 minutes.</p> <p>23 Q Was David Gordon the author?</p> <p>24 A He may or may not be. Lance</p>
<p style="text-align: right;">Page 419</p> <p>1 words safer cigarette or less hazardous.</p> <p>2 A Yes.</p> <p>3 Q Name the document.</p> <p>4 A I wrote - during my tenure at</p> <p>5 Brown & Williamson, I wrote a number of</p> <p>6 documents that had the use of the words</p> <p>7 safer cigarette in it and less hazardous.</p> <p>8 Less biological risk was the same euphemism.</p> <p>9 Those words were deleted out by the</p> <p>10 attorneys routinely.</p> <p>11 Q Name the document, sir, that this</p> <p>12 happened in.</p> <p>13 A 1989 and '90 operating plans, the</p> <p>14 final operating plan.</p> <p>15 Q We will get all of those. We'll</p> <p>16 get all of those. Name a second document,</p> <p>17 sir, if you can. Because these operating</p> <p>18 plans, you tell me, are incomplete, so we</p> <p>19 will have to go get whatever we can to find</p> <p>20 the complete ones.</p> <p>21 Name a second document you</p> <p>22 authored that had the words safer</p> <p>23 cigarette or less hazardous.</p> <p>24 A Clifty Falls minutes.</p>	<p style="text-align: right;">Page 42</p> <p>1 Reynolds could have been the author. There</p> <p>2 could have been a number of people who could</p> <p>3 have been the authors.</p> <p>4 Q Lance Reynolds was there?</p> <p>5 A Yes. Paul Chen was there,</p> <p>6 statistician; John Lauerbach; I believe</p> <p>7 Alex Golub may have been there. And a</p> <p>8 number of other people. This was a</p> <p>9 brain-storming meeting and part of the brain</p> <p>10 storming with R & D folks was discussing</p> <p>11 opportunities for developing a less</p> <p>12 hazardous cigarette, a safer cigarette.</p> <p>13 Q Sir, other than the project</p> <p>14 Airbus, you were not able to name a single</p> <p>15 project that B & W engaged in; is that true,</p> <p>16 for, as you say, a less hazardous or safer</p> <p>17 cigarette?</p> <p>18 A There are multiple applications</p> <p>19 and multiple product technologies that</p> <p>20 could be used to develop a safer</p> <p>21 cigarette, yes</p> <p>22 Q No, sir. My question was, a</p> <p>23 project. In the -- in the claims that you</p> <p>24 have made publicly to 60 Minutes, in the</p>

<p style="text-align: right;">Page 422</p> <p>1 claims that you have made since you were 2 terminated and fired, you have claimed that 3 B & W stopped a project to develop a safer 4 or less hazardous cigarette after 1989's 5 meeting in Vancouver, and that is false, 6 isn't it? 7 A. B & W canceled all research 8 related to a safer cigarette after B & W 9 transferred research to Southampton? 10 Q. Sir, will you answer my question? 11 MR. ALDOCK: He is answering 12 that question. He is answering that 13 question. That's a direct response. 14 Q. Isn't it false, sir, that B & W 15 canceled a project on a safer cigarette 16 after the Vancouver meeting? Isn't that 17 false? 18 A. B & W canceled and transferred 19 the research to Southampton for litigative 20 reasons. 21 Q. And that research is project 22 Airbus? 23 A. Project Nova project Day was in 24 it.</p>	<p style="text-align: right;">Page 424</p> <p>1 Q. They canceled research on 2 project Day that was going on in Canada? 3 MR. ALDOCK: Wait a minute. 4 Where are we? 5 MR. SHEFFLER: Project Day. 6 MR. ALDOCK: You were on 7 Airbus. 8 MR. SHEFFLER: I'm talking 9 about project Day because he mentioned 10 that 11 Q. Project Day, sir, you claim was 12 being done at B & W and then canceled? 13 A. I don't think I claimed that. 14 MR. ALDOCK: No, he didn't say 15 that. 16 Q. Okay. So other than Airbus, 17 sir, what was the project that B & W 18 supposedly canceled after the Vancouver 19 meeting and shipped overseas? 20 A. I don't think I said project, did 21 I? I said work on a safer, less hazardous 22 cigarette. 23 Q. You said project. 24 THE COURT: Are you talking</p>
<p style="text-align: right;">Page 423</p> <p>1 Q. Project Day was a Canadian 2 project, wasn't it? It wasn't a B & W 3 project. 4 A. B & W funded it. 5 Q. Sure, they funded it. They 6 funded all the research that was going on 7 at Southampton as well as the other 8 companies. 9 A. And therefore, they had access 10 to all that research. 11 Q. And they didn't cancel it after 12 September of 1989, did they? 13 A. They sure didn't use it. 14 Q. They didn't cancel, did they? 15 A. They sure didn't use it. 16 Q. Sir, can you answer my question? 17 They didn't cancel it, did they? 18 A. They transferred it out of the 19 United States. 20 THE COURT: Did they cancel it, 21 Dr. Wigand? 22 THE WITNESS: They canceled and 23 transferred. I have to qualify canceled 24 and transferred.</p>	<p style="text-align: right;">Page 425</p> <p>1 about his testimony here or his -- 2 MR. SHEFFLER: I'm talking about 3 the claims, Judge, that he's made to the 4 media, to the public at large, ever since 5 he was fired. 6 THE COURT: Not just 60 Minutes, 7 but anywhere? Is that what you are saying? 8 Q. Haven't you said, sir -- 9 A. Show it to me, please. 10 Q. Sir, haven't you said to Mike 11 Wallace on 60 Minutes that Wigand told us 12 originally -- 13 MR. ALDOCK: Page and line, 14 please. 15 MR. SHEFFLER: I'm just asking 16 to his recollection. 17 Q. Haven't you said, sir, that -- 18 haven't you told Mike Wallace that nine 19 months after you were hired, the company 20 told you, B & W, to abandon the project on 21 a safer cigarette? Didn't you tell that 22 to Mike Wallace? 23 MR. ALDOCK: Now, he'll read the 24 document, because you won't give him the</p>

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<p>1 page and line.</p> <p>2 Q. Don't you recall making that</p> <p>3 statement to Mike Wallace?</p> <p>4 A. I would have to read the</p> <p>5 document.</p> <p>6 Q. Don't you recall making that</p> <p>7 statement?</p> <p>8 A. I would like to read the</p> <p>9 document.</p> <p>10 Q. So you don't recall making that</p> <p>11 statement?</p> <p>12 A. I would like to read the</p> <p>13 document and refresh my memory.</p> <p>14 Q. Well, let me ask you this, sir,</p> <p>15 would it have been an accurate statement to</p> <p>16 have made -- in 1996, would it have been</p> <p>17 accurate to say that Wigand was hired to</p> <p>18 develop a safer cigarette, and nine months</p> <p>19 later B & W canceled the project? Would</p> <p>20 that have been accurate?</p> <p>21 A. Where is that stated?</p> <p>22 Q. I'm asking you, sir, if that would</p> <p>23 have been accurate?</p> <p>24 THE COURT: He is not asking if</p>	<p>1 you, sir? Does it mean continue it</p> <p>2 someplace else?</p> <p>3 A. Yeah, that's part of it.</p> <p>4 Q. So canceled mean if you continue</p> <p>5 doing the work someplace else, that's</p> <p>6 canceled?</p> <p>7 A. In a way, it is, yeah.</p> <p>8 Q. Okay. Do you think when you</p> <p>9 told Mike Wallace that the project was</p> <p>10 canceled, he thought what you really meant</p> <p>11 was they continued doing the work</p> <p>12 someplace else?</p> <p>13 A. Did I use the word canceled to</p> <p>14 Mike Wallace? Did I use that word?</p> <p>15 MR. SHEFFLER: Would you mark</p> <p>16 this, please?</p> <p>17 -----</p> <p>18 Thereupon, Wigand Exhibit No. 28</p> <p>19 was marked for purposes of</p> <p>20 identification.</p> <p>21 -----</p> <p>22 Q. Now, sir, you were interviewed</p> <p>23 by Mike Wallace sometime before the</p> <p>24 broadcast, correct, on 60 Minutes, in</p>
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<p>1 that was stated to Mike Wallace; he's</p> <p>2 asking --</p> <p>3 THE WITNESS: Would that be an</p> <p>4 accurate statement in my opinion?</p> <p>5 THE COURT: Yes.</p> <p>6 Q. Your opinion.</p> <p>7 A. Yes.</p> <p>8 Q. That would be an accurate</p> <p>9 statement?</p> <p>10 A. Yes.</p> <p>11 Q. There was a project --</p> <p>12 A. Projects.</p> <p>13 Q. -- that you worked on for nine</p> <p>14 months?</p> <p>15 A. Multiple projects.</p> <p>16 Q. That was canceled after</p> <p>17 Vancouver? There was a project?</p> <p>18 A. It was transferred --</p> <p>19 Q. No, no, no, no, sir, no.</p> <p>20 Canceled.</p> <p>21 MR. ALDOCK: He has defined</p> <p>22 canceled differently than you have defined</p> <p>23 canceled.</p> <p>24 Q. Well, what's canceled mean to</p>	<p>1 February?</p> <p>2 A. That is correct.</p> <p>3 Q. And at the time you were</p> <p>4 originally interviewed, was there a tape</p> <p>5 made?</p> <p>6 A. I'm sorry?</p> <p>7 Q. At the time you were interviewed</p> <p>8 by Mike Wallace, did he make a tape?</p> <p>9 A. I believe so.</p> <p>10 Q. Okay. At the time that he made</p> <p>11 the tape, sir, there was also a transcript</p> <p>12 made, as you know, don't you?</p> <p>13 A. There may have been a transcript</p> <p>14 made.</p> <p>15 Q. Didn't you get a call from the</p> <p>16 Daily News asking you whether or not you</p> <p>17 had any comment on the transcript from the</p> <p>18 interview that was originally made?</p> <p>19 A. I think we covered that</p> <p>20 yesterday.</p> <p>21 Q. And what was your response?</p> <p>22 A. I believe I got a call.</p> <p>23 Q. Okay. So you know there was a</p> <p>24 transcript, right?</p>

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<p>1 MR. ALDOCK: It doesn't follow 2 there was a transcript. You established 3 he got a call and someone said he got a 4 transcript, Counsel. 5 Q If you would, sir, look at what we 6 have marked as Exhibit No. 28. This is a 7 copy of a Radio/TV Reports transcript of a 8 broadcast excerpt on January 26th, 1996, 9 and it's a broadcast excerpt where Dan 10 Rather was the anchor, Mike Wallace was the 11 reporter. This was TV news, wasn't it? 12 A I assume it is, yes. 13 Q Didn't you -- weren't you 14 watching this TV news broadcast with Marie 15 Brenner in her hotel room? 16 A I don't remember. That was a 17 very difficult night. 18 Q If Marie Brenner said in the 19 Vanity Fair article that you were watching 20 this TV broadcast with her, is she 21 accurate or inaccurate? 22 A I don't know. You would have to 23 ask Miss Brenner. 24 Q You can't remember?</p>	<p>1 A Those exact words? This is Mr. 2 Wallace talking. I don't know what Mr. 3 Wallace -- 4 Q Mr. Wallace may have been 5 incorrect? 6 A Mr. Wallace may be paraphrasing 7 it. Did I say those exact words? I may 8 have said some of the words. I'm not so 9 sure I said those exact words. 10 Q Well, let's look at the next 11 words. But nine months later, he told us -- 12 that's you; right? 13 A Yes. 14 Q -- the company ordered him to 15 abandon the project. That's what Mike 16 Wallace said; right? 17 A Yes. 18 Q Did you tell him that? 19 A I may have said to him that nine 20 months after that, the company instructed me 21 that there will be no research into a safer 22 less-hazardous cigarette and all references 23 to that in any documents would not be used 24 any further.</p>
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<p>1 A As I said to you, it was a very 2 traumatic night. 3 Q Don't you remember your father 4 called you during this broadcast? 5 A I believe that's what Miss 6 Brenner said. 7 Q Okay. But you don't recall 8 that? 9 A I just told you it was a very 10 traumatic night for me. 11 Q Look at the third paragraph, 12 sir? 13 A Um-hum. 14 Q Do you see where it says Wigand 15 told us that originally he had been hired by 16 Brown & Williamson to help them produce a 17 safer cigarette that would reduce the 18 dangers of cancer and heart disease? Do you 19 see that? 20 A Um-hum. 21 Q Did you tell them that? 22 A It appears I may have said that. 23 Q I know it appears you may have 24 said that, but did you tell them that?</p>	<p>1 Q Mr. Wigand -- 2 A You will have to ask Mr. Wallace. 3 Q Mr. Wigand, did Mike Wallace 4 learn from you that there was a project 5 done at Brown & Williamson for the first 6 nine months you were there that was 7 abandoned? Did he learn that from you? 8 A He may or may have learned it from 9 others. I don't know where he learned it 10 from. 11 Q He said that you told him. Is 12 he lying? 13 A I don't know. You'll have to 14 ask Mr. Wallace. 15 Q You don't know if he is lying? 16 A I have absolutely no idea. You'll 17 have to talk to Mr. Wallace. 18 Q So he may be lying? 19 A I don't know; I didn't say that. 20 Q Well, you don't know whether he 21 is lying or not? 22 A I think what you need to do is 23 test him on his recollection and memory. 24 Q So he may be lying?</p>

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<p>1 A. He may be inaccurate; he may not 2 be lying. 3 Q. Okay. Would it be inaccurate to 4 say that nine months after you started 5 working at B & W, the company ordered you 6 to abandon the project? 7 A. This is an excerpt, is it not? Is 8 this the actual verbiage, or is this Mr. 9 Wallace talking on TV? 10 Q. This is Mr. Wallace talking on 11 TV, a TV program you saw. 12 A. And how does that relate to what 13 was in the CBS tape? 14 Q. 60 Minutes? 15 A. Yeah. 16 Q. Well, let me ask you, sir, is it 17 correct? 18 THE COURT: Regardless of 19 whether you told him that or not. He is 20 asking you now is that accurate? Is that 21 what happened? Did that occur? 22 A. Is it accurate that after nine 23 months the company ordered me not to 24 continue work on a less hazardous, less a</p>	<p>1 answer. 2 MR. SHEFFLER: Judge, I move to 3 strike the last answer as nonresponsive. 4 MR. ALDOCK: They ordered me to -- 5 THE COURT: Sustained. 6 THE WITNESS: They ordered me 7 to abandon the program. 8 Q. Excuse me. 9 A. I'm reading from the transcript. 10 Q. Excuse me, the judge just ruled. 11 MR. ALDOCK: I would like to 12 revisit it. It's in the transcript. 13 THE COURT: Let's ask it again 14 and let's answer it again. Let's get it 15 accurate. Ask your question. 16 Q. Nine months after you started at 17 Brown & Williamson, did B & W order you to 18 abandon the project? Yes or no. 19 A. What is "the project" here and 20 what was Mr. Wallace referring to in the 21 project? 22 Q. Sir, you told us that the -- 23 he was referring to a safer cigarette 24 project and you told us what that project</p>
<p>1 safer cigarette? Yes. 2 Q. Could you please answer my 3 question. 4 MR. ALDOCK: He just did. He 5 just did. 6 Q. Nine months later, Wigand told us 7 the company ordered him to abandon the 8 project. Did the company order you to 9 abandon the project nine months after you 10 started it? 11 A. The company ordered me, after nine 12 months at the company, not to use the words 13 safer and less hazardous, and any -- 14 THE COURT: Dr. Wigand, answer 15 his question. Did they order you to 16 abandon the program? 17 THE WITNESS: They ordered me to 18 abandon programs or use of words directed 19 at less hazardous, safer cigarette. I 20 don't know any other way to answer it. 21 MR. SHEFFLER: Judge, I have to 22 get an answer to this question. Was Mike 23 Wallace -- 24 MR. ALDOCK: You got his</p>	<p>1 was. 2 A. Airbus was one approach to a 3 safer cigarette. 4 Q. Did Brown & Williamson abandon 5 that project in September or October of 6 1989? 7 A. Did it abandon? That's 8 Mr. Wallace's word. Did they transfer it 9 offshore and cancel it, yes. 10 Q. So is that incorrect that Brown 11 & Williamson abandoned the project nine 12 months after you started there? That's 13 incorrect, isn't it? 14 A. They abandoned all projects and 15 all efforts directed to a less hazardous 16 and safer cigarette. 17 Q. Sir, the project -- you told us -- 18 the only project you named was Airbus and 19 that was terminated in March. And it had 20 nothing to do with litigation concerns, did 21 it? 22 A. Yes, it did. 23 Q. It was technologically 24 impossible according to you.</p>

<p style="text-align: right;">Page 438</p> <p>1 A. I didn't say it was 2 technologically impossible. 3 Q. Was it abandoned? 4 A. When? 5 Q. Anytime. 6 A. It was fully abandoned and 7 transferred overseas. 8 Q. What did they transfer if they 9 fully abandoned it? 10 A. The effort. 11 Q. The effort continued; did it 12 not? 13 A. And the effort was transferred 14 overseas such that it was not discoverable 15 in the United States. 16 Q. Did it continue, sir? 17 A. On a lower level, yes. 18 Q. Did it continue, sir? 19 A. I just thought I answered that 20 question. 21 Q. And was also that research known 22 to B & W? Can you answer? 23 A. What's the question? 24 Q. Was that research also known to</p>	<p style="text-align: right;">Page 438</p> <p>1 A. Project Nova Noxia was another 2 project. 3 Q. Was that dealing with Airbus, 4 alternatively to - 5 A. It sure was. It was dealing 6 with combustion products and how to remove 7 toxic wastes. 8 Q. Project Nova was designed to 9 look at alternatively engineered cigarette 10 combustion; correct? 11 A. That was one of its - one. 12 Q. That was it, right? 13 A. Not in my mind. In other people's 14 minds. 15 Q. Other noxae was a project 16 designed to eliminate certain precursors 17 that had been identified by regulators as 18 matters of concern; isn't that correct? 19 A. What other matters of concern? 20 Q. Matters of concern to 21 regulators; is that correct? 22 A. Other noxia means what? What 23 does noxia mean? 24 Q. Well, it's specific smoke</p>
<p style="text-align: right;">Page 439</p> <p>1 B & W? 2 A. There was a lot of research 3 known to B & W. 4 Q. Why would they transfer the 5 research overseas to avoid litigation 6 concerns and then retain the documents 7 about the research? 8 A. They surely edited the words and 9 the purpose behind it. 10 Q. What was the research name again? 11 A. I'm sorry? 12 Q. What was the research name that 13 was continued in Southampton? 14 A. There was -- other noxia? 15 Q. No, no, the research directed to 16 what Brown & Williamson identified as the 17 fundamental research needed before they 18 could continue doing prototype research on 19 Airbus. What was it named? 20 A. I believe it was called Nova, but 21 it had other interaction with a lot of other 22 programs. It was not done as a sole entity. 23 24 Q. Project Nova?</p>	<p style="text-align: right;">Page 439</p> <p>1 constituents -- 2 A. Poisons. 3 Q. -- is it not? 4 A. Poisons. 5 Q. That have been recognized to be 6 poisonous by concerned regulators. That's 7 what the program was devoted to, right? 8 A. That's part of it, yes. That 9 was the program and it interfaced and 10 interacted. No research stands by itself, 11 it's integrated. 12 Q. And was that program canceled 13 after Vancouver? 14 A. Was other noxia? 15 Q. Yes, was it canceled after 16 Vancouver? 17 A. Was it canceled? I don't 18 believe it was. 19 Q. It continued until the time you 20 left? 21 A. It may have, yes. 22 Q. Okay. So we are not talking 23 about that, are we? That's not the 24 project, is it? That's not the safer</p>

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<p>1 cigarette project, is it?</p> <p>2 A. Is that a question or is that</p> <p>3 rhetorical?</p> <p>4 Q. Yes. When I say "is it," that</p> <p>5 means it's a question.</p> <p>6 A. All of the projects were</p> <p>7 interactive. Airbus was specifically</p> <p>8 directed at a safer cigarette, yeah.</p> <p>9 Airbus is part of the projects.</p> <p>10 Q. Okay. Airbus wasn't canceled for</p> <p>11 litigative concerns, it was stopped for</p> <p>12 technological reasons, and the research</p> <p>13 continued; did it not?</p> <p>14 MR. ALDOCK: That was -- that --</p> <p>15 he is arguing with the witness now, your</p> <p>16 Honor, we have had that answer.</p> <p>17 THE COURT: Sustained.</p> <p>18 Q. All right. Project Nova which</p> <p>19 was the fundamental research program</p> <p>20 instituted at Southampton to look at the</p> <p>21 research needs to make an alternative</p> <p>22 design device like Premiere or Airbus,</p> <p>23 continued after Vancouver; did it not?</p> <p>24 A. In part, yes.</p>	<p>1 Q. B & W was trying to do prototype</p> <p>2 development, wasn't it?</p> <p>3 A. It was trying to do prototype</p> <p>4 development. It was trying to develop a</p> <p>5 safer cigarette. It was trying to develop</p> <p>6 project Airbus.</p> <p>7 Q. Until they run into their</p> <p>8 technological concerns?</p> <p>9 A. There were technological</p> <p>10 concerns, yes. Every project has</p> <p>11 technological concerns.</p> <p>12 Q. Now, sir, you said that they</p> <p>13 transferred this research overseas because</p> <p>14 of litigative concerns.</p> <p>15 A. I think I said that, yes.</p> <p>16 Q. Now, what would be the</p> <p>17 litigative concerns?</p> <p>18 A. In the context of Airbus and the</p> <p>19 context of Premiere as an engineered</p> <p>20 product, it was a safer product. Reduced</p> <p>21 biological activity, i.e. just like</p> <p>22 Premiere.</p> <p>23 Q. So what were the litigative</p> <p>24 concerns?</p>
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<p>1 Q. What do you mean in part?</p> <p>2 A. It was a lower effort.</p> <p>3 Q. It was a million dollars a year,</p> <p>4 wasn't it?</p> <p>5 A. Is that a lot of effort?</p> <p>6 Q. Well, what was the effort</p> <p>7 beforehand?</p> <p>8 A. I don't know. What was the</p> <p>9 effort?</p> <p>10 Q. What was the effort before</p> <p>11 November or September of 1989?</p> <p>12 A. More than a million dollars.</p> <p>13 Q. How much more?</p> <p>14 A. I can't recall. I would have to</p> <p>15 look at the numbers.</p> <p>16 Q. How do you know it was more than</p> <p>17 a million dollars?</p> <p>18 A. Just general recollection.</p> <p>19 Q. Southampton was spending more</p> <p>20 than a million dollars on Nova before</p> <p>21 1989?</p> <p>22 A. No, I think B & W was spending</p> <p>23 more than a million dollars on Nova, I'm</p> <p>24 sorry, Airbus.</p>	<p>1 A. I don't know.</p> <p>2 Q. You don't know?</p> <p>3 A. Ask Mr. Wells.</p> <p>4 Q. Sir --</p> <p>5 A. Discovering something that</p> <p>6 referred to or referenced a safer, less</p> <p>7 hazardous cigarette.</p> <p>8 Q. Sir, Premiere was on the market,</p> <p>9 was it not?</p> <p>10 A. What are the claims of</p> <p>11 Premiere? Premiere claimed low to</p> <p>12 nonexistent biological activity, low.</p> <p>13 Q. And that was on the market,</p> <p>14 right?</p> <p>15 A. Yes.</p> <p>16 Q. So if Brown & Williamson was</p> <p>17 really concerned that the discovery of</p> <p>18 Airbus could rise to some litigative</p> <p>19 concern, what concern could it be? Premiere</p> <p>20 was already out there. If people were going</p> <p>21 to say, you can devise a Premiere, it's</p> <p>22 safer, it was already on the market. What</p> <p>23 litigative concerns would be added by</p> <p>24 Airbus?</p>

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<p>1 A. Why? Because anytime you refer to 2 a safe or safer cigarette, you indict 3 everything else as unsafe. 4 Q. But Premiere was already there, 5 Airbus wasn't anything more than Premiere. 6 Why would they be concerned about that? 7 A. So Premiere was -- Airbus was 8 safer then. 9 Q. Premiere was safer than Airbus? 10 A. Wait a minute. You said that 11 Airbus and Premiere were the same. 12 Therefore, Airbus and Premiere are safe. 13 Q. Sir, I have never -- 14 A. I think that's what you -- 15 Q. -- made a statement for evidence 16 in this case. I'm merely asking 17 questions. It's your claim though that 18 Premiere was a safer cigarette. It's not 19 my claim? 20 THE WITNESS: Can you read back 21 what he just said to me? I mean -- 22 Q. If you need to be -- 23 MR. SHEFFLER: Your Honor, I 24 don't really think that's necessary in the</p>	<p>1 A. I don't know whether the FDA 2 said it was a safer cigarette or not. 3 Q. Do you know one authority, 4 person in the United States who has said 5 Premiere was a safer cigarette? 6 A. I think the document, the green 7 document will refer to that, to reduced 8 biological activity. What does that mean? 9 Q. The green document that you were 10 referring to, actually that's the Premiere 11 book that you were talking about yesterday? 12 A. I believe so. 13 Q. Produced by RJR? 14 A. I believe so. 15 Q. And you claim that they say in 16 that book that Premiere is a safer 17 cigarette? 18 MR. ALDOCK: That's not what he 19 said. 20 Q. Well, I'm asking you. Do you 21 claim that in this book which is not 22 green, actually it's orange, but do you 23 claim in this book Premiere is a safer 24 cigarette?</p>
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<p>1 context of the -- 2 THE COURT: It isn't. Answer 3 the question. 4 Q. Sir, isn't it true that there 5 never were voiced concerns about 6 litigation with respect to Airbus. Airbus 7 was a competitive product designed to 8 compete against the Premiere which had 9 already been marketed in the United 10 States; isn't that true? 11 A. And to be competitive, you had to 12 match Premiere one for one. 13 Q. Yes, isn't that true? 14 A. And Premiere was a safer 15 cigarette and a nicotine delivery device. 16 Q. According to you? 17 A. According to RJR also and 18 according to the FDA. 19 Q. The FDA said Premiere was a 20 safer cigarette? 21 A. No, the FDA said it was a 22 nicotine delivery device. 23 Q. Did the FDA say it was a safer 24 cigarette?</p>	<p>1 A. I think there are euphemisms and 2 definitions that are used with it, yes. 3 Q. You say it's a safer cigarette 4 in here? 5 A. There are statements in there 6 that lead one to believe it's a safer 7 cigarette, yes. 8 Q. Did RJR ever say -- 9 A. May I see the book? 10 Q. -- in this book or in anyplace 11 that Premiere was a safer cigarette? 12 A. Did they -- yes. 13 Q. RJR said that? Premiere is a 14 safer cigarette? 15 A. There are inferences -- 16 Q. Not inferences, sir. You're -- 17 MR. ALDOCK: Let him answer the 18 question. You asked the question, now get 19 the answer. 20 THE WITNESS: The industry 21 continues and has used the word low 22 biological irritant, reduced biological 23 activity as a key euphemism for safer 24 cigarettes.</p>

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1 Q. Sir --

2 A. And I believe the biological

3 activity that was conducted on RJR showed it

4 was significantly reduced, if not

5 negligible.

6 Q. Okay.

7 A. Which is, by definition, a less

8 hazardous cigarette.

9 Q. By whose definition?

10 A. By the general public.

11 Q. Okay. The general public --

12 A. And scientific community other

13 than the tobacco industry.

14 Q. Okay. So you claim that what RJR

15 was saying was that it made a product that

16 had lower biological activity; correct?

17 A. I believe that's true, yes.

18 Q. Okay. And you claim that to you

19 and the general public that means it is

20 safer; correct?

21 A. To me, the general public, and

22 to the scientific community at large.

23 Q. Okay. But you agree, do you

24 not, sir, that the words safer cigarette

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1 never appears in this book --

2 A. Never.

3 Q. -- about new cigarette

4 prototypes?

5 A. I would have to look at the book

6 again. I haven't looked at the book for

7 several years.

8 Q. Sir, what do you think the

9 regulatory bodies in America -- what do you

10 think their reaction would be if a cigarette

11 company manufactured a product that said it

12 was safer?

13 A. I think they would answer a lot

14 of consumer concerns.

15 Q. No, no, sir. My question was,

16 what do you think the regulatory bodies in

17 America would be if a cigarette was marketed

18 as safe?

19 A. I think it would come under the

20 FD&C Act of 1938.

21 Q. What do you think the regulatory

22 community would say?

23 A. I think they would have to prove

24 it and demonstrate it.

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1 Q. Isn't it the position of the U.S.

2 Surgeon General, of HHS -- isn't it his

3 position there is no such things as a safe

4 cigarette? Isn't that his position?

5 A. Safer.

6 Q. Isn't that his position, sir?

7 A. Who are you talking about?

8 Q. The Surgeon General.

9 MR. ALDOCK: Is the question

10 safe or safer? What are we asking?

11 Q. Have you read the Surgeon

12 General's reports?

13 A. Which ones?

14 Q. I think I have asked you that

15 before. You told me you did read the

16 Surgeon General reports. You read them

17 from year to year, didn't you?

18 A. From year to year, yes.

19 Q. You know that they were

20 published on a periodic basis; right?

21 A. Yes.

22 Q. Do you know whether they were

23 published yearly?

24 A. I don't think they were

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1 published yearly.

2 Q. You know, sir, that the Surgeon

3 General has investigated the issues of

4 smoking and health since 1964?

5 A. And before.

6 Q. Well, they never published a

7 report before, did they?

8 MR. ALDOCK: That wasn't a

9 question.

10 Q. That is my question. They never

11 published a report?

12 MR. ALDOCK: Now.

13 Q. That's what I do. I ask one

14 question after the other. They never

15 published a report before, did they?

16 A. Before 1964, the Surgeon

17 General? They may have. I can't recall

18 one at this time.

19 Q. Well, sir, in your review of the

20 Surgeon General's reports, did you ever look

21 at the report called, "The Changing

22 Cigarette?"

23 A. I may have.

24 Q. Well, sir, you were at R & D in

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<p>1 1988?</p> <p>2 A. I believe '89, December 31st,</p> <p>3 1988.</p> <p>4 Q. That's when you started?</p> <p>5 A. Well, that was -- yes, I</p> <p>6 started on January 3rd, 1989.</p> <p>7 Q. Okay. You were there for four</p> <p>8 years, right?</p> <p>9 A. Right.</p> <p>10 Q. And you claimed to have some</p> <p>11 interest in cigarette modification and</p> <p>12 design; is that correct?</p> <p>13 A. Yes, I did.</p> <p>14 Q. And isn't it true, sir, that you</p> <p>15 would have, if you were interested, gone</p> <p>16 to the R & D library to look to see what</p> <p>17 was in it about cigarette design and</p> <p>18 changes?</p> <p>19 A. I would have went to the library,</p> <p>20 but most likely, I would have sent somebody</p> <p>21 to do it for me.</p> <p>22 Q. Okay. Who did you send?</p> <p>23 A. I could have sent my secretary,</p> <p>24 I could have sent a number of people.</p>	<p>1 Q. Yes.</p> <p>2 A. I could have read it, yes.</p> <p>3 Q. You could have read it?</p> <p>4 A. I have read many things. I</p> <p>5 can't give you everything I have ever</p> <p>6 read.</p> <p>7 Q. Well, let me ask you this. Do you</p> <p>8 know of any other Surgeon General's report</p> <p>9 that addressed the issue of cigarette design</p> <p>10 other than the changing cigarette in 1981?</p> <p>11 A. I'm sure there are other</p> <p>12 documents and I'm sure there are other</p> <p>13 reports. I can't recall them right now.</p> <p>14 You are asking me for a bibliography. I</p> <p>15 would be more than happy to provide for</p> <p>16 you a bibliography of everything I've ever</p> <p>17 read in my life.</p> <p>18 Q. I'm simply asking you about the</p> <p>19 Surgeon General's reports. The '64 report</p> <p>20 we know you have read. You told us you</p> <p>21 read that yesterday. Right? '64 Surgeon</p> <p>22 General?</p> <p>23 A. Yes, I read it.</p> <p>24 Q. It was actually a report by the</p>
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<p>1 Q. Is your secretary Martha Thomas?</p> <p>2 A. Or I could have called up Carol</p> <p>3 Lincoln in the library and asked her to</p> <p>4 bring me X, Y and Z books.</p> <p>5 Q. Did you ever call Carol Lincoln</p> <p>6 in the library and ask for requests?</p> <p>7 A. Yes, many times.</p> <p>8 Q. You did?</p> <p>9 A. Yes.</p> <p>10 Q. If Carol Lincoln would state under</p> <p>11 oath that you never called her for a request</p> <p>12 for information, would that be inaccurate?</p> <p>13 A. I would like to that statement.</p> <p>14 Do you have such a statement?</p> <p>15 Q. Sir, let me ask you this</p> <p>16 question. Did you, in your zeal to</p> <p>17 discover information about designing of</p> <p>18 cigarettes, go to the library and seek the</p> <p>19 1981 Surgeon General's report on the</p> <p>20 changing cigarette?</p> <p>21 A. Did I go to the library</p> <p>22 personally?</p> <p>23 Q. Or did you send somebody?</p> <p>24 A. Have I ever read that?</p>	<p>1 advisory committee to the Surgeon General,</p> <p>2 right?</p> <p>3 A. I'll take your word for that.</p> <p>4 Q. Now, what other Surgeon General</p> <p>5 reports have you read?</p> <p>6 A. '88.</p> <p>7 Q. And '88 dealt with, dealt with</p> <p>8 what? Nicotine, did it not?</p> <p>9 A. Dealt with nicotine, I believe,</p> <p>10 yes. I would have to look.</p> <p>11 Q. Did you see any other Surgeon</p> <p>12 General reports?</p> <p>13 A. The changing strategies on</p> <p>14 tobacco, I have read.</p> <p>15 Q. When was that written?</p> <p>16 A. Maybe '89, '90, I'm not sure but</p> <p>17 I have to look at it. I haven't come</p> <p>18 prepared here with --</p> <p>19 Q. Changing strategies on tobacco.</p> <p>20 That was the Surgeon General's report?</p> <p>21 A. I can't remember the exact title.</p> <p>22 Q. Okay.</p> <p>23 A. I would be more than willing to</p> <p>24 provide --</p>

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<p style="text-align: right;">Page 458</p> <p>1 Q. What did the report, what did 2 the report changing strategies on tobacco 3 or something similarly titled deal with? 4 A. I can't recall it right now. 5 Q. Can you name any report that you 6 read during your tenure at Brown & 7 Williamson or before or after from the 8 Surgeon General other than the ones we 9 just talked about the '64 I showed you 10 yesterday? 11 A. I'm sure if I sat down I could 12 clearly and succinctly provide for you a 13 copy of everything I read before I got to 14 Brown & Williamson, probably what I read 15 during my tenure at Brown & Williamson, 16 and most certainly I can give you 17 everything I have read since departing 18 Brown & Williamson in March of 1993. 19 Q. Okay. Sir, if you can give me a 20 copy of everything you have read, that's 21 pretty -- that's great. What I am 22 asking for, can you give me an indication, 23 a suggestion, of the Surgeon General's 24 reports you read. They came out once a</p>	<p style="text-align: right;">Page 460</p> <p>1 Q. Okay. Tell me -- 2 A. And it -- excuse me. I'm not 3 finished yet. 4 Q. Sure. 5 A. It deals with the changing of 6 the DSM code and the ISP code. 7 Q. Do you mean ICD? 8 A. All right. I'm sorry, ICD code. 9 Q. Okay, fine. Tell me what the ICD 10 code was. 11 A. It was changing of the World 12 Health Organization's interpretation of 13 nicotine as a substance of abuse as -- the 14 same action as cocaine, and then they would 15 reimburse on it. 16 Q. Okay. Let me ask you this, sir. 17 At the time you were at B & W, did the 18 World Health Organization regard nicotine 19 as a substance of addiction? 20 THE VIDEOGRAPHER: Going off 21 the record. The time is approximately 22 11:23. 23 (Discussion held off the record) 24 (Recess taken.)</p>
<p style="text-align: right;">Page 459</p> <p>1 year, right? 2 A. I don't think they came out 3 every year. 4 Q. Did they come out every year 5 while you were at B & W? 6 A. I can't recall. I mean, that's 7 a specific I don't pay attention to. 8 Q. Well, did you read more than one 9 Surgeon General's report while you were at 10 B & W? 11 A. Yes. 12 Q. Okay. Which ones did you read? 13 A. Actually, I can't recall it 14 right now. 15 Q. Can you recall what they 16 addressed? 17 A. I think one definitely addressed 18 an issue of nicotine and changing nicotine 19 from a substance of dependency to a 20 substance of addictiveness. And I believe 21 that document clearly, as my recollection, 22 now looks at the effective definition of 23 what dependency is versus what addiction 24 is.</p>	<p style="text-align: right;">Page 461</p> <p>1 THE VIDEOGRAPHER: Back on the 2 record, the time is approximately 11:35 a.m. 3 BY MR. SHEFFLER: 4 Q. When we went off the record, Mr. 5 Wigand, you were talking about the ICD 6 nine, and I believe you said that in the 7 ICD, at the time you were at Brown & 8 Williamson, it had reclassified tobacco as 9 an addiction -- or a drug of dependence 10 like cocaine; is that correct? 11 A. I don't think I said that. 12 Q. What did you say? 13 A. I don't think I ever said 14 tobacco I think I may have said nicotine. 15 Is that not what I said? 16 Q. I don't remember, I'm asking you 17 if you can recall because I don't have the 18 transcript in front of me. 19 A. Why don't we right back and 20 rehash and go through it again. 21 Q. What is it that ICD did during 22 the time you were there with respect to 23 nicotine? 24 A. Again, I can't recall everything</p>

<p style="text-align: right;">Page 462</p> <p>1 that I read in the time frame in which I</p> <p>2 read it, but I clearly believe or remember</p> <p>3 the time when ICD reclassified nicotine</p> <p>4 from a substance of dependency to a</p> <p>5 substance of addictiveness. I think it</p> <p>6 was slightly after or in conjunction with</p> <p>7 the modification to the DSM manual.</p> <p>8 Q. DSM meaning Diagnostic &</p> <p>9 Statistical Manual of Mental Disorders?</p> <p>10 A. I think that's about right.</p> <p>11 Q. You are familiar with that?</p> <p>12 A. Surely.</p> <p>13 Q. We are going to ask you a bunch</p> <p>14 of questions about that, sir, but right</p> <p>15 now I want to focus on the ICD. Now, at</p> <p>16 the time you were at Brown & Williamson,</p> <p>17 do you know what the ICD said with respect</p> <p>18 to nicotine?</p> <p>19 A. I can give you my contemporary</p> <p>20 recollection, I'm not sure I can give you</p> <p>21 exactly what was said during my tenure at</p> <p>22 Brown & Williamson. I can tell you</p> <p>23 sometime during my readings, there was</p> <p>24 clearly a change from being a substance of</p>	<p style="text-align: right;">Page 46-</p> <p>1 are asking me to recall things that I</p> <p>2 read years ago.</p> <p>3 Q. Is that the DSM of today or the</p> <p>4 DSM of back then?</p> <p>5 A. I would have to again refresh my</p> <p>6 memory.</p> <p>7 Q. All right, sir.</p> <p>8 Let's look at the --</p> <p>9 A. I don't know whether it's</p> <p>10 DSM-III or DSM-I. I'm not sure. I would</p> <p>11 have to look at the document.</p> <p>12 Q. Do you know what the latest</p> <p>13 version of DSM is?</p> <p>14 A. No, I haven't looked at that</p> <p>15 recently.</p> <p>16 Q. Let me show you, sir --</p> <p>17 A. DSM-IV.</p> <p>18 Q. Which was a very recently</p> <p>19 published.</p> <p>20 A. What was the volume during my</p> <p>21 tenure at Brown & Williamson?</p> <p>22 Q. You were there in 1988 --</p> <p>23 A. '89.</p> <p>24 Q. '89 to '93?</p>
<p style="text-align: right;">Page 463</p> <p>1 dependency and a redefinition; I think it</p> <p>2 was consistent with the change in the DSM</p> <p>3 Manual.</p> <p>4 Q. Let me ask you this, sir --</p> <p>5 let's mark this as the next one.</p> <p>6 Before we mark it, let me ask</p> <p>7 you this, sir, is it your recollection</p> <p>8 that the ICD equated nicotine as a drug of</p> <p>9 of dependence, a drug of addiction like</p> <p>10 cocaine?</p> <p>11 A. I would have to really refresh</p> <p>12 my memory on it. I'm giving you my best</p> <p>13 recollection on it. I know the DSM Manual</p> <p>14 clearly compared nicotine to cocaine and</p> <p>15 said it was a drug of addiction, not a</p> <p>16 drug of dependence or habituation. I</p> <p>17 believe that's true.</p> <p>18 Q. You believe that the DSM said</p> <p>19 that nicotine was a substance of</p> <p>20 addiction, not a substance of dependence?</p> <p>21 A. Right.</p> <p>22 Q. You are clear on that one?</p> <p>23 A. I'm pretty sure on that. Again,</p> <p>24 I would have to refresh my memory. You</p>	<p style="text-align: right;">Page 46</p> <p>1 A. '93. So it was DSM-II or III.</p> <p>2 Q. I don't know, sir. What do you</p> <p>3 recall?</p> <p>4 A. I can't really recall.</p> <p>5 Q. There was a DSM-I; is that</p> <p>6 right?</p> <p>7 A. I believe there is.</p> <p>8 Q. There was a DSM-II?</p> <p>9 A. Um-hum.</p> <p>10 Q. There was a DSM-III?</p> <p>11 A. You are good at counting, and</p> <p>12 four now.</p> <p>13 Q. Is there any others?</p> <p>14 A. I can't recall right now. I</p> <p>15 haven't followed it intimately.</p> <p>16 Q. You don't know if there was any</p> <p>17 revised versions of the DSM?</p> <p>18 A. You mean DSM-VI or V?</p> <p>19 Q. Like DSM-III revised?</p> <p>20 A. I can't remember specifically.</p> <p>21 Q. You don't remember seeing it?</p> <p>22 Do you?</p> <p>23 A. Not to my recollection today but</p> <p>24 I read a lot of stuff. I continue to</p>

<p style="text-align: right;">Page 466</p> <p>1 read. I don't always attribute everything 2 to a specific revision. 3 Q. All right, sir. I would like to 4 hand you the DSM-IV and ask you if you can 5 find the word addiction anywhere in it. 6 MR. ALDOCK: Is that when we are 7 taking our break? 8 Q. Look it up in the index. Look up 9 nicotine and see how it's classified in 10 that book. 11 MR. ALDOCK: Which question? You 12 have got three pending. 13 Q. Look up nicotine and see how 14 it's classified in that book? 15 A. This is 1994's, so I would ask 16 you to give me DSM-III. 17 Q. Sir, you said that you have come 18 to the conclusion that DSM, the Diagnostic 19 and Statistical Manual -- 20 A. Get DSM-III and DSM-II, and I 21 will find it. 22 Q. DSM-II, was that there when you 23 were there? 24 A. Where?</p>	<p style="text-align: right;">Page 46</p> <p>1 a bibliography if he had time and went 2 back to his office of what he had read. 3 That's not even close. 4 Q. Would you agree with me, sir, 5 that the DSM has a category in it called 6 substance dependence? 7 A. Which DSM? 8 Q. The DSM-IV. 9 A. I'm not familiar with DSM-IV. 10 Q. All right. Did you talk about 11 the DSM with Dr. Kessler when you met with 12 him and reviewed issues relating to 13 tobacco and nicotine? 14 A. I don't believe I did. 15 Q. Did you talk to him about your 16 views about addiction when you were there? 17 A. Did I talk to him about my views 18 of nicotine as an addictive substance? I 19 probably did. 20 Q. Sir, did you review with 21 Dr. Kessler what your definition of what 22 addiction is? 23 A. I think I reviewed with him what 24 I understood my definition of addiction</p>
<p style="text-align: right;">Page 467</p> <p>1 Q. At Brown & Williamson. 2 A. It may or may not have been. 3 Q. Okay. Would you agree with me, 4 sir, that nicotine was not characterized 5 as an addiction in the DSM-IV? 6 A. DSM-IV is in 1994 after I left 7 Brown & Williamson. No, I won't until I 8 read the manual. You are asking me for a 9 conclusion based on reading -- not 10 reading anything. 11 Q. Sir, you told me you remember 12 everything you read or you could remember 13 everything you read and write it down from 14 the time you started reading and you told 15 me -- 16 A. That is not what I said. 17 MR. ALDOCK: That is about as bad 18 a mischaracterization of his testimony 19 that you have done. That was your best. 20 that he remembers everything he reads and 21 writes it down. 22 Q. That's what he said, he could 23 sit down and write it all down. 24 MR. ALDOCK: He said he could do</p>	<p style="text-align: right;">Page 46</p> <p>1 was, and I think it was confirmed by an 2 expert panel convened by the FDA. 3 Q. What is your definition of 4 addiction? 5 A. That people knowingly continue 6 to use a substance even though they know 7 there are risks associated or deleterious 8 effects associated with the substance. And 9 they -- I would define something of 10 addiction as a substance that the people 11 knowingly continue to use and that 12 substance or the -- continue using a 13 substance or chemical that one knowingly 14 has adverse health effects. That's 15 generally, and I would have to sit down 16 and work out the definition specifically. 17 Q. I'm asking you to do that, sir, 18 if you could, just tell us your definition 19 of addiction. What's an addictive drug? 20 A. I think an addictive drug is a 21 drug like nicotine. I think nicotine has 22 many cocaine-type activities. It causes 23 highs, it cause lows, I think there are 24 neurotransmitters. It goes across the</p>

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1 blood-brain barrier. Would you like a
2 lecture on nicotine? I could go through
3 that very carefully if you would like.
4 Q. What I asked you was your
5 definition of addiction or addictive drug.
6 A. In my belief, nicotine and
7 cocaine are addictive drugs.
8 Q. I know that, sir. You have said
9 that. What I am asking you for, sir, is
10 your definition, your definition, of an
11 addiction or addictive drug.
12 A. I think I gave that to you.
13 Q. Well --
14 THE COURT: I think he did.
15 Q. So your definition of an
16 addictive drug is something that someone
17 uses that has deleterious effects?
18 A. Those are your words, not mine.
19 Q. Can we have his answer read back
20 as to what an addictive drug was or an
21 addiction, his definition.
22 (Record read)
23 Q. What is your definition of
24 addiction? And your answer was that it

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1 Q. I'm asking you, that was your
2 definition, are think addicted to
3 Haagen-Dazs ice cream?
4 A. I don't think so. Does the DSM
5 provide for reimbursement on people
6 addicted to Haagen-Dazs ice cream or they
7 have addiction to nicotine?
8 Q. We haven't established that
9 addiction is even in the DSM-IV.
10 A. Is it in any DSM?
11 Q. We will try to get all of the
12 DSM's for you to review to assure yourself
13 that addiction is or is not in any of
14 them, okay?
15 A. Okay.
16 Q. Today what I want to follow-up
17 on is your definition, your definition of
18 an addiction or an addictive substance is
19 something that many people knowingly use
20 even though it has deleterious health
21 effects. That is a very broad definition,
22 isn't it, sir?
23 A. To start with, it's a very broad
24 definition. If you would like me to go

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1 was a substance that people knowingly
2 use --
3 MR. ALDOCK: Continue to use
4 and that substance -- or continuing using
5 a substance or chemical that one knowingly
6 has adverse health effects, page 38, lines
7 114 to 18.
8 Q. That's your definition of
9 addiction?
10 A. That's a start. If you would
11 like me to write it much more
12 specifically, I probably could sit down
13 and write a much more specific definition.
14 Q. Doctor, there are many
15 substances that people knowingly and
16 regularly use that may have deleterious
17 health consequences to them, aren't there?
18 A. Such as?
19 Q. Such as high-fat foods.
20 A. Yes.
21 Q. Such as Haagen-Dazs ice cream.
22 People are addicted to Haagen-Dazs ice
23 cream?
24 A. Are they?

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1 into the specific details of why I believe
2 that conclusion or that definition is
3 correct, I can do that.
4 Q. I want you to go through the
5 specific details of the definition. Tell
6 me, sir, in addition to the knowing use of
7 something that's harmful, what else do you
8 require for a substance to be an
9 addiction?
10 A. Being part of the
11 neurotransmitter network, cross the
12 blood/brain barrier.
13 Q. Let me ask you this about the
14 neurotransmitter network. People who jog
15 produce endogenous endorphins, do they
16 not?
17 A. Is that a question or a
18 statement?
19 THE COURT: He asked you a
20 question.
21 A. I believe they do.
22 Q. That has an effect on the
23 neurotransmitter system, doesn't it?
24 A. I believe it does.

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<p>1 Q. Are people addicted to jogging?</p> <p>2 Let me withdraw that question.</p> <p>3 Let me ask you this question: If people</p> <p>4 jog, knowing that they have a risk of</p> <p>5 doing damage to their knees or their</p> <p>6 ankles, and they also like jogging because</p> <p>7 it gives them pleasure, i.e., it produces</p> <p>8 endogenous endorphins -- endogenous means</p> <p>9 it's produced in the body; right?</p> <p>10 A. Produces a pharmacological</p> <p>11 effect, let's say that. Endorphins do</p> <p>12 produce a pharmacological effect much the</p> <p>13 same as a pain killer.</p> <p>14 Q. Much the same as nicotine?</p> <p>15 A. Much the same as nicotine -- or</p> <p>16 cocaine.</p> <p>17 Q. Are people addicted to jogging?</p> <p>18 A. I don't know. Are they? I</p> <p>19 don't think so.</p> <p>20 Q. But your definition that it</p> <p>21 involves a neurotransmitter system and may</p> <p>22 be done and create deleterious effects</p> <p>23 would apply to jogging, wouldn't it?</p> <p>24 MR. ALDOCK: I don't think</p>	<p>1 Q. Is it pharmacologically active</p> <p>2 in the brain?</p> <p>3 A. Is it pharmacologically active</p> <p>4 in the brain? It may be.</p> <p>5 Q. Is it a stimulant?</p> <p>6 A. It may be, yeah.</p> <p>7 Q. Are people addicted to caffeine?</p> <p>8 A. I don't know. Are people --</p> <p>9 does the DSM provide for treatment of</p> <p>10 people addicted to coffee? Has the</p> <p>11 pharmacological -- has the</p> <p>12 psychiatrist --</p> <p>13 Q. Does the DSM say nicotine is</p> <p>14 addictive?</p> <p>15 A. Which DSM?</p> <p>16 A. I think it says it's addictive.</p> <p>17 And I think there is a specific DSM that</p> <p>18 refers to it as an addictive substance.</p> <p>19 Q. Okay. Like I said, sir, we will</p> <p>20 get those for you. But let me go back to</p> <p>21 your definition, because it's -- you're</p> <p>22 the person who has made these claims that</p> <p>23 nicotine is an addictive substance, and</p> <p>24 you have made them frequently. And what I</p>
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<p>1 jogging is defined as a substance.</p> <p>2 Q. That's the difference?</p> <p>3 A. It could be.</p> <p>4 Q. Chocolate has theobromine in it,</p> <p>5 doesn't it?</p> <p>6 A. I suppose it does, yes.</p> <p>7 Q. And in chocolate, theobromine is</p> <p>8 psychologically active, is it not?</p> <p>9 A. What do you mean by</p> <p>10 psychologically active.</p> <p>11 Q. Has a pharmacological activity in</p> <p>12 the brain?</p> <p>13 A. You'll have to educate me what</p> <p>14 you mean by pharmacological activity.</p> <p>15 Q. That's the term you used</p> <p>16 earlier.</p> <p>17 A. I use it in the context of my</p> <p>18 understanding of nicotine.</p> <p>19 Q. Does theobromine cross the</p> <p>20 blood/brain barrier?</p> <p>21 A. I'm not sure.</p> <p>22 Q. Does caffeine cross the</p> <p>23 blood/brain barrier?</p> <p>24 A. I believe so.</p>	<p>1 want to explore is your definition?</p> <p>2 A. Which claims have made</p> <p>3 frequently? Please show them to me.</p> <p>4 Q. You haven't claimed that</p> <p>5 nicotine is an addictive substance?</p> <p>6 A. You just made a statement, where</p> <p>7 are the claims that I --</p> <p>8 Q. Have you ever made the statement</p> <p>9 that nicotine is an addictive substance to</p> <p>10 the press?</p> <p>11 A. Have I ever made the statement</p> <p>12 -- I'm not sure. I would have to refresh</p> <p>13 my memory by looking at what I've said to</p> <p>14 the press.</p> <p>15 Q. You can't remember ever making a</p> <p>16 statement to the press that nicotine is an</p> <p>17 addictive substance?</p> <p>18 A. I may have. In terms of</p> <p>19 precision and accuracy here, I would like</p> <p>20 to refresh my memory. Am I not entitled</p> <p>21 to that?</p> <p>22 Q. You certainly are, sir, but I'm</p> <p>23 entitled to test your --</p> <p>24 A. I may or may not have said it in</p>

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<p>1 those words, but could I refresh my 2 memory? 3 Q. Well -- 4 A. Yes or no. 5 Q. You certainly can, sir, but let 6 me test your recollection just a bit. Did 7 you ever tell the public media that 8 nicotine is an addictive substance? 9 A. Did I ever tell the media that 10 nicotine was an addictive substance? I 11 probably have. 12 Q. Did you ever tell the media that 13 tobacco is an addiction? 14 A. Have I ever said that to the 15 media, that tobacco is an addiction? I 16 could have, yes. 17 Q. Mr. Wigand, are you careful, 18 when you talk to the media, about what you 19 say about tobacco and B & W and tobacco -- 20 A. I haven't said much to the media 21 about tobacco with the exception of 60 22 Minutes. 23 Q. Yesterday, sir -- or excuse me, 24 today, in the Courier Journal, today,</p>	<p>1 don't. I don't think anybody smokes for 2 anything other than nicotine. 3 Q. Excuse me, sir. We are on 4 addiction to tobacco? 5 A. Yeah, we are. We are getting 6 there. It's not a simple question. 7 Nicotine is an addictive substance. It's 8 recognized by world authorities -- the 9 only ones that think nicotine is not 10 addictive is the tobacco industry. 11 Q. Okay, sir. Let me ask you this 12 -- you claim you came to the opinion that 13 nicotine was an addictive substance back 14 in the 80's; right? 15 A. Did I come to the opinion -- 16 MR. ALDOCK: Why did you say 17 that? Is that in something we have had 18 here in the two days? I missed it. 19 Q. Have you not, sir, stated 20 publicly that when you were at B & W, you 21 believed nicotine was an addictive 22 substance? 23 A. You are covering all the 80's? 24 Q. In the 80's?</p>
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<p>1 today's edition there is a pictures of you 2 at a news conference that you gave 3 yesterday, in which you said, I believe at 4 the end of this, at least one child will 5 make it through life unfettered by 6 addiction to tobacco. Did you say that? 7 A. Yes, I did, and I hope they do. 8 Q. That was yesterday, you said 9 addiction to tobacco. 10 A. Yes, I did. 11 Q. Now, do you recall that you made 12 statements about addiction to tobacco? 13 A. Nicotine. 14 Q. Okay. Were you careful when you 15 said yesterday addiction to tobacco? 16 A. I think so. 17 Q. Okay. Where is it, sir, and what 18 are you relying upon for your definition 19 of addiction to tobacco? 20 A. I'm relying on a number of 21 scientific studies that have been done -- 22 I think it's clearly recognized nobody has 23 ever started smoking with a nicotine-free 24 cigarette. Are you aware of that? I</p>	<p>1 A. Are you including the time I was 2 at B & W, or are you talking about the 3 time prior to B & W or after B & W? 4 Q. Let me ask you about -- let me 5 ask you about the time that you were at 6 B & W. Had you come to the conclusion 7 that nicotine was an addictive substance 8 at that time? 9 A. I, as well as many scientists at 10 B & W, clearly recognized that nicotine 11 was addictive. 12 Q. Okay. Now, what is the 13 definition that you used at that time 14 other than something that is deleterious 15 to your health that you want to do or you 16 do, and neurotransmitters? 17 A. Has dopahergic effects. 18 Q. So does food -- doesn't it? 19 A. Does it? 20 Q. Doesn't food have -- 21 A. What food? What food are we 22 talking about? 23 Q. Doesn't food affect the 24 dopahergic response?</p>

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<p>1 A. Receptors?</p> <p>2 Q. Doesn't food, doesn't food</p> <p>3 create an increase in dopamine?</p> <p>4 A. What food?</p> <p>5 Q. Food, sir. Sugar for one.</p> <p>6 A. I don't think so.</p> <p>7 Q. You don't think so?</p> <p>8 A. No.</p> <p>9 Q. Okay.</p> <p>10 A. Does sugar create a level of</p> <p>11 dopamine? No, I don't think so.</p> <p>12 Q. Okay. Do you know of any foods</p> <p>13 that do, sir?</p> <p>14 A. Yes, I do.</p> <p>15 Q. What foods?</p> <p>16 A. Mostly proteins that are high in</p> <p>17 tyrosine.</p> <p>18 Q. Okay. So proteins that are high</p> <p>19 in tyrosine. Where are going to find</p> <p>20 proteins that are high in tyrosine in</p> <p>21 foods?</p> <p>22 A. Where am I going to find it?</p> <p>23 Q. Yeah, which foods?</p> <p>24 A. Which foods? Proteins, meat.</p>	<p>1 Q. Okay, sir. I understand that is</p> <p>2 what you want to say, and you can say it,</p> <p>3 and you have said it, and you have said it</p> <p>4 publicly. What I am trying to get at is</p> <p>5 why you have the belief that a substance</p> <p>6 that is deleterious to your health and its</p> <p>7 psychoactivity is addictive.</p> <p>8 There are substances that have</p> <p>9 psychoactivity and are deleterious to your</p> <p>10 health commonly use today; are there not?</p> <p>11 A. There are many substances, yes.</p> <p>12 Q. Do you classify all of them as</p> <p>13 addictive?</p> <p>14 A. Do you classify eating meat and</p> <p>15 smoking in the same breath?</p> <p>16 THE COURT: Don't ask the</p> <p>17 questions.</p> <p>18 Q. Can I ask the questions here?</p> <p>19 A. I do not --</p> <p>20 Q. Do you have a definition of</p> <p>21 addiction that would apply to nicotine and</p> <p>22 not to red meat? You haven't given it to</p> <p>23 us yet.</p> <p>24 A. Do I have a definition?</p>
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<p>1 Q. Meat. So meat, red meat affects</p> <p>2 the dopamine right?</p> <p>3 A. Red meat produces and goes into</p> <p>4 the biochemical pathways and serves as a</p> <p>5 synthetic pathway to form tyrosine.</p> <p>6 Tyrosine is part of a metabolic precursor</p> <p>7 for dopamine.</p> <p>8 Q. Okay. Now, sir --</p> <p>9 A. But to say food --</p> <p>10 Q. Excuse me. Are you addicted to</p> <p>11 meat?</p> <p>12 A. We are not talking about</p> <p>13 addictions to meat.</p> <p>14 Q. I thought that's what we were</p> <p>15 trying to define, is your term to</p> <p>16 addiction.</p> <p>17 A. No. I'm talking about a</p> <p>18 chemical substance that one knows is</p> <p>19 deleterious to your health.</p> <p>20 Q. Is red meat deleterious to your</p> <p>21 health?</p> <p>22 A. Smoking is deleterious to</p> <p>23 people's health, and they continue doing</p> <p>24 it because they are hooked on nicotine.</p>	<p>1 Q. What is your definition of</p> <p>2 addiction, sir? You used the term a lot.</p> <p>3 What's your definition?</p> <p>4 A. Something that causes a</p> <p>5 pharmacological effect in a human being.</p> <p>6 Q. And that's a lot of things,</p> <p>7 isn't it?</p> <p>8 A. There is a lot of things that do</p> <p>9 that.</p> <p>10 Q. Everything that gives us</p> <p>11 pleasure does that, doesn't it?</p> <p>12 A. I haven't known meat to give me</p> <p>13 too many pleasures.</p> <p>14 Q. Sir, it gives some people</p> <p>15 pleasure. It's pharmacological to them?</p> <p>16 A. Does it? I'm not sure that</p> <p>17 happens</p> <p>18 Q. Okay.</p> <p>19 A. And I wouldn't associate eating</p> <p>20 meat and smoking cigarettes in the same</p> <p>21 breath in terms of addictiveness.</p> <p>22 Q. Okay, sir.</p> <p>23 MR. SHEFFLER: At this point,</p> <p>24 Judge, I think we are at a breaking point.</p>

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1 Maybe we can take lunch.
2 THE COURT: Okay.
3 THE VIDEOGRAPHER: Going off the
4 record. The time is approximately 11:56
5 a.m.

6

7 Thereupon, the deposition was
8 adjourned at 11:56 a.m.

9

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1 CERTIFICATE

2 I, Thomas F. Rumfola, a Registered
3 Professional Reporter, do hereby certify
4 that I reported the deposition of Jeffrey S.
5 Wigand, and that the foregoing transcript of
6 such proceedings is a full, true and correct
7 transcript of my stenotypy notes made to the
8 best of my ability.

9 I do further certify that I was called
10 there in the capacity of a Court Reporter,
11 and am not otherwise interested in this
12 proceeding.

13
14
15 THOMAS F. RUMFOLA,
16 Registered Professional Reporter

17
18
19 JEFFREY S. WIGAND,
20 Registered Professional Reporter

21 Notary Public for the State of Kentucky.
22 My Commission Expires: _____

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